

## PARLIAMENTARY BUREAU

### SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM – NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL

#### Introduction

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls.

#### Northern Ireland Troubles (Legacy and Reconciliation) Bill

2. The Northern Ireland Troubles (Legacy and Reconciliation) Bill was introduced in the House of Commons on 17 May 2022.

3. A LCM was lodged by Keith Brown MSP, Cabinet Secretary for Justice and Veterans, on 20 October 2022. A supplementary LCM was lodged by Angela Constance, Cabinet Secretary for Justice and Home Affairs on 16 June 2023. A further supplementary LCM was lodged by Angela Constance, Cabinet Secretary for Justice and Home Affairs on 4 September 2023.

4. The Explanatory Notes accompanying the Bill describe the principal legislative measures of the Bill as follows:

- To establish a new independent body, the Independent Commission for Reconciliation and Information Recovery (ICRIR). When requested to do so, this body will conduct investigations into deaths and very serious injuries which resulted from conduct forming part of the Troubles.
- To require designated persons to carry out a programme of memorialisation work, including an oral history initiative.
- To introduce a conditional immunity scheme, allowing those who cooperate with the ICRIR to receive immunity from prosecution for offences resulting in or connected with Troubles-related deaths and serious injuries.
- To bar investigations into Troubles related incidents by any organisation other than the ICRIR, and bar prosecutions for Troubles-related offences not involving death or serious injury, or which are not connected to offences involving death or serious injury.
- To bar civil claims arising from conduct forming part of the Troubles and events between 1 January 1966 and 10 April 1998, where a claim has yet to be filed by the date of the Bill's introduction.
- To provide that inquests which have not yet reached the stage of a substantive hearing by the 1 May 2023 or the date on which the ICRIR becomes operational (whichever comes first) will be stopped, but can be referred by families or coroners to the ICRIR for investigation.

5. The original and first supplementary LCMs both indicated that the Scottish Government does not intend to lodge a motion seeking the Scottish Parliament's consent to the UK Parliament legislating on devolved matters in this Bill. That continues to be the position set out in this second supplementary LCM. The Scottish

Government continues to consider that the Bill, as amended, remains incompatible with its view that those who have suffered during the Troubles are able to obtain justice and that those who committed offences during that time are appropriately held to account/punished.

### **Parliamentary consideration**

6. The Parliament debated this Bill on 28 June 2023 and agreed the following motion:

#### **S6M-09722 Angela Constance: Northern Ireland Troubles (Legacy and Reconciliation) Bill – UK Legislation –**

That the Parliament agrees with the recommendation in the Scottish Government's supplementary legislative consent memorandum to withhold consent for the UK Government's Northern Ireland Troubles (Legacy and Reconciliation) Bill.

7. The need for a further LCM has arisen since that date, due to further relevant amendments passed on 18 July 2023 which relate to the way in which the ICIR carries out its functions (relevant insofar as they relate to Scotland) of criminal investigations and of the review and investigations of deaths or harmful conduct. However, the Scottish Government's position on consent to the Bill has not changed as these amendments do not address the discretionary power in the ICIR to grant immunity from prosecution for perpetrators of murder and other serious offences where these offences were committed during the Troubles. The Scottish Government considers this encroaches on the ability of the Lord Advocate to take decisions independently on whether to commence prosecutions.

8. The Criminal Justice Committee was designated as lead committee for the original LCM and previous supplementary LCM (though the remit of the Equalities, Human Rights and Civil Justice Committee is also engaged). However, as regards the second supplementary LCM, the Bureau is invited to consider suspending Standing Orders so that no lead committee is designated.

9. The final stage of the Bill at Westminster is expected on 5 September. The Criminal Justice Committee is not scheduled to meet until 13 September. It is therefore not possible for the Committee to consider and report on the LCM in advance of the Bill reaching this stage. A report after the Bill has finished its passage may not be considered the best use of parliamentary time and resources. Instead it is suggested that the Criminal Justice Committee still put the LCM on its agenda to consider and note its lodging. This approach provides a record of the LCM being lodged but acknowledges the difficulties in reporting in these timescales. The Convener of the Criminal Justice Committee has been consulted and is content with this approach in the circumstances. A draft motion to suspend Rule 9B.3.5 is set out below

10. The original LCM was also considered by the Delegated Powers and Law Reform (DPLR) Committee in regard to provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation. The first supplementary LCM did not engage the remit of the DPLR Committee. We understand that the DPLR Committee has determined that its remit is not engaged by this further supplementary LCM. There is

therefore no need to suspend any Standing Orders requirements in respect of the DPLR Committee.

**Recommendation**

11. The Bureau is invited to consider recommending to the Parliament by motion that Rule 9B.3.5 be suspended in relation to the second supplementary LCM on the Northern Ireland Troubles (Legacy and Reconciliation) Bill.

12. A draft motion is provided below.

**Parliamentary Business Team  
September 2023**

**Draft Parliamentary Bureau motion on the Northern Ireland Troubles (Legacy and Reconciliation) Bill (UK Legislation):**

**Suspension of Standing Orders** – That the Parliament agrees that, for the purposes of consideration of the second supplementary legislative consent memorandum on the Northern Ireland Troubles (Legacy and Reconciliation) Bill (UK Legislation), Rule 9B.3.5 of Standing Orders is suspended.