

DELEGATED POWERS AND REGULATORY REFORM COMMITTEE
NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL
Memorandum by the Northern Ireland Office

Introduction

1. This Memorandum has been prepared by the Northern Ireland Office to assist the Delegated Powers and Regulatory Reform Committee with its scrutiny of the Northern Ireland Troubles (Legacy and Reconciliation) Bill (the Bill). The Bill is to be introduced into the House of Commons in the House of Commons on 17 May 2022. This memorandum identifies the provisions in the Bill which confer powers to make delegated legislation and explains in each case why these powers have been taken and the nature of, and reason for, the procedure selected for exercising those powers.
2. Northern Ireland's past is one of the major factors in shaping its present – the legacy of the Troubles continues to be deeply felt both by victims and society, with significant impacts on politics, public debate and the justice system. More than 3,500 people were killed as a result of violence and incidents during the Troubles, including over 1,000 members of the security forces. Many cases remain unresolved and are the subject of further investigation.
3. Legacy issues are currently examined during the course of criminal investigations and prosecutions, inquest proceedings and civil claims. This gives rise to complex and disparate outcomes and undermines efforts to promote reconciliation. For many years, there has been political consensus on all sides that the current legacy system requires urgent reform. Engagement to date has demonstrated that there is appetite for the Government to take bold steps in adopting a new approach necessary to deal with the past, and the Government firmly believes that the package of measures set out in this Bill is the best way to deliver much needed and long-lasting reform.

Purpose and Effect of the Bill

4. The purpose of the Bill is to implement a range of measures to address the legacy of the Northern Ireland Troubles. In particular, the legal and criminal justice systems in Northern Ireland are dealing with a high number of historic investigations and proceedings which relate to historic events, many of which are extremely long-running. The Government considers that a large volume of ongoing litigation maintains a divisive narrative and hinders the provision of answers to

individuals and wider societal reconciliation. The measures in the Bill relating to legal proceedings, investigations and information recovery seek to address that situation. In addition, the Bill implements a programme of memorialisation to record and commemorate the Troubles, which it is hoped will assist all parts of society to contribute to memorialisation events and activities and wider reconciliation.

5. The Bill makes the following broad provisions:
 - a. The creation of the Independent Commission for Reconciliation and Information Recovery (ICRIR). The ICRIR's functions (in addition to those outlined in (b) below) will be to carry out reviews of deaths, certain serious injuries and other circumstances arising from Troubles-related conduct when requested to do so. Requests will be able to be made by victims, family members, the Secretary of State, the Attorney General for Northern Ireland, the Advocate General for Northern Ireland or a Coroner carrying out a Troubles-related inquest¹. The ICRIR will also be able to carry out a review of a death or harmful conduct causing serious injury in relation to which an application for immunity from prosecution has been made. It will also produce a historical record of all remaining deaths on which it does not report. It will be led by a panel of Commissioners, with one of the Commissioners having the powers and privileges of a constable², which can be conferred on the ICRIR's officers where appropriate, and the power to compel individuals to engage with the information recovery process. The ICRIR will have the power to demand disclosure from UK and devolved state bodies. It will be separate from the criminal justice system.
 - b. The introduction of an approach which moves legacy away from a primary focus on criminal justice outcomes in order to deliver tangible outcomes for those most affected by the Troubles. The Police Service of Northern Ireland, the Police Ombudsman for Northern Ireland, police forces elsewhere in the United Kingdom and other law enforcement bodies will be required to cease any current criminal investigations into conduct forming part of the Troubles (conduct which took place during the period from 1 January 1966 to 10th April 1998 (the conclusion of the Good Friday Agreement)). This requirement will come into effect two months after Royal

¹ In Scotland, a sheriff conducting an inquiry may make a request.

² Excluding powers of arrest and detention

Assent, but will not apply in cases where the investigation is for the purposes of an criminal prosecution ongoing at that time. In future, individuals will still be liable for prosecution for their involvement in offences connected with a death or serious injury, but will be able to make an application to ICRIR for immunity from prosecution. Immunity must be granted where certain conditions are met, including that the person has provided a truthful account of their involvement in the death or incident resulting in serious injury. In the event that immunity is not granted to an individual, the ICRIR can continue its review and - if the evidence permits - produce a file for prosecution which can be submitted to the relevant prosecutor. Ongoing prosecutions (where a decision to prosecute has been taken before commencement) will not be affected by these proposals.

- c. The bill will also prohibit new inquests (inquiries in Scotland) into Troubles-related deaths. Inquests begun before commencement will be allowed to continue at least until 12 months after introduction or the date on which the legal duty on ICRIR to carry out reviews comes into effect. At that point, only inquests in which the final, substantive hearing has already begun will be allowed to continue to their natural conclusion. Coroners will be under a duty to bring to a close all inquests which have not reached that stage which then be referred by them or families into the ICRIR.
- d. Provisions in the bill will prohibit civil proceedings relating to the Troubles and commenced after introduction from continuing beyond 2 months' after Royal Assent, and no new claims may be brought after that point. Civil proceedings relating to the Troubles and commenced prior to the Bill's introduction will not be affected by these measures.
- e. A programme of memorialisation, academic research and oral history creation and preservation, to be delivered by designated bodies with expertise in these fields. These organisations will take advice from a wider advisory forum drawn from across the various communities in Northern Ireland. They will oversee a programme of work including a memorialisation strategy, academic research into the Troubles, creation of additional oral history archives and outreach programmes.

Delegated Powers

- 6. Of the powers created under this bill, (clause 52 - the power to make consequential provision) includes a power to amend primary legislation through secondary legislation. Clause 33(3) (a power to make provision in relation to the winding up

of the ICIR) includes a power to make regulations repealing or otherwise amending most of the provisions of Part 2 of the Bill. Full justification for taking these Henry VIII power are set out below. Secondary legislation made under clause 33 will be subject to affirmative procedure, as will secondary legislation made under clause 52, which amends primary legislation.

7. With the exception of the power to make consequential provision (clause 52) (including related transitional and saving provisions (clause 53(5)), and the power to make transitory, transitional or saving provisions relating to the coming into force of provisions in the Bill (clause 57(4)), all of the regulation-making powers in the Bill are conferred solely on the Secretary of State. A number of these powers relate to matters which are transferred under the Northern Ireland devolution settlement. The Bill does not contain provision for the Secretary of State to seek the consent of the Northern Ireland Assembly in respect of these matters.
8. The Bill takes this approach for a number of reasons. Legacy matters are highly controversial, politically charged and divisive in Northern Ireland. A vast number of issues remain unresolved as a result of political and societal impasse and there is no single accepted or agreed way to address them. The provisions in this Bill represent the UK Government's view on how these matters should be progressed and resolved, but they are not universally condoned. There is a very real prospect that providing the Northern Ireland Assembly with the power of veto in relation to delegated powers could frustrate the purpose and application of the provisions in the Bill, which in the Government's view is necessary to achieve progress and reconciliation in Northern Ireland.
9. Accordingly, the Government has carefully considered whether to provide the Northern Ireland Assembly with a power of veto in relation to transferred matters, which would be more formally in line with the devolution settlement in Northern Ireland. In this instance it has decided to confer the power solely on the Secretary of State in order to achieve the delivery of this policy.
10. Clause 53(5) states that any regulations made under this Bill may make different provision for different purposes; incidental, supplementary or consequential provision; and transitional or transitory provision or savings.

Clause 19(9) No immunity from prosecution for sexual offences

Power conferred on: Secretary of State

Power exercisable by: Rule making

Parliamentary Procedure: Negative procedure

Context and Purpose

11. The ICRIR will not be able to grant immunity from prosecution for sexual offences. Clause 19 stipulates that “Troubles-related sexual offence” means any Troubles-related offence that is a) a sexual offence, or b) an inchoate offence relating to a sexual offence.

Explanation for delegation

12. In order to ensure that all relevant sexual offences are captured, the Secretary of State may via regulations make provision about the meaning of sexual offence or inchoate offence relating to sexual offences.

Explanation for Parliamentary process

13. Regulations made by the Secretary of State are by way of negative resolution in Parliament. As these regulations will relate to the definition of sexual offence, it is considered that negative resolution procedure will provide appropriate scrutiny.

Clause 20(3) [Imm1010] Requests for immunity: procedural matters

Power conferred on: Secretary of State

Power exercisable by: Rule making

Parliamentary Procedure: Negative procedure

Context and Purpose

14. The ICRIR will be able to grant immunity for offences directly resulting in Troubles-related deaths/serious injuries to those who cooperate with it. This clause sets out the procedural aspects for granting immunity and confers on Secretary of State the ability to make rules on the procedures for making and dealing with requests for immunity.

Explanation for delegation

15. Given the technical detail accompanying the procedural aspects for granting immunity, it would be most appropriate to set this out separately rather than on the face of the Bill. It is not possible or appropriate to set out in the Bill the level of detail that may be required due to the extent of this detail.

Explanation for Parliamentary process

16. Regulations made by the Secretary of State are by way of negative resolution in Parliament. As these regulations will relate to procedural matters concerning requests for immunity, it is considered that negative resolution procedure will provide appropriate scrutiny.

Clause 21(6)+(7)+(8) [Imm1020] Determining a request for immunity

Power conferred on: Secretary of State

Power exercisable by: Giving guidance

Parliamentary Procedure: None

Context and Purpose

17. This clause gives the Secretary of State the power to issue guidance in relation to the determination of immunity applications, to which the immunity requests panel must have regard. This includes:

- whether an account of a person's conduct is true to the best of a person's knowledge and belief;
- whether conduct is possible criminal conduct;
- whether information is an account of possible criminal conduct.
- whether a person should be granted specific immunity, general immunity, or specific and general immunity (within the meaning of clause 18)

18. The clause more generally sets out the role of the immunity requests panel in determining whether to grant immunity from prosecution for a Troubles related offence.

Explanation for delegation

19. The nature of the content upon which the Secretary of State may issue guidance is detailed and technical, which would sit best under separate guidance rather than on the face of the Bill.

Explanation for Parliamentary process

20. The detail of guidance provided will follow the primary legislation being scrutinised by Parliament.

Clause 29(1)+(3) [Info2028] Guidance and protocols relating to information handling; guidance to the ICRIR about the exercise of its functions under clause 4

Power conferred on: Secretary of State
Power exercisable by: Giving guidance
Parliamentary Procedure: None

Context and Purpose

21. Pursuant to the duty of full disclosure to the ICRIR set out in clause 5, the ICRIR will receive information from various State bodies including UK Government departments and Northern Ireland departments and offices. Paragraph 2 of Schedule 7 requires that, in providing information to the ICRIR, such bodies must identify any information which is sensitive (defined as information which, if disclosed generally, might prejudice the national security interests of the United Kingdom, or information supplied by certain bodies). Clause 26 provides that the ICRIR must not disclose information which is sensitive. All state bodies and officers of the ICRIR will therefore need to be able to identify information which is considered to be sensitive in order to comply with that duty.
22. Clause 29(1) gives the Secretary of State power to give guidance about the identification of sensitive information to the ICRIR and other Northern Ireland state bodies and the Scottish Ministers who may be in possession of such sensitive information and under a duty to disclose it to ICRIR. Where guidance is given to a particular body that body will be under a duty to have regard to it when identifying information as sensitive in accordance with Schedule 7. This guidance is required to facilitate the full and effective sharing of information in a consistent and efficient way which will enable the ICRIR to fulfil its key duty of investigation and provision of reports.
23. Clause 4(1)(a) puts the ICRIR under a duty not to prejudice the national security interests of the United Kingdom in the course of carrying out its functions. Clause 28(3) gives the Secretary of State power to give guidance to the ICRIR, to which ICRIR must have regard, about the exercise of its functions in accordance with that duty. This guidance is required to ensure ICRIR and Government has full confidence in the processes in place to protect national security, balanced against the need to provide transparency.

Explanation for delegation

24. The guidance that the Secretary of State is empowered to give under both clause 29(1) and (3) relates to protecting the national security interests of the UK. Different guidance may be appropriate for the bodies listed in clause 23(1) and all guidance given under these clauses may necessarily provide detailed, specialist instruction on the nature and sensitivity of various types of sensitive information and documents. It is not possible or appropriate to set out in the Bill the level of detail that may be required due to its likely sensitivity and specialist nature. Guidance will need to be kept under review as circumstances evolve.

Explanation for Parliamentary process

25. . The Bill itself places a duty on the ICRIR in relation to national security at clause 4(1)(a) [Body 1100b] and also requires the ICRIR to identify sensitive information held by it under Schedule 7, paragraph 1. Any guidance issued under clause 29(1) and (3) will assist the ICRIR to comply with those duties - and it is therefore considered that Parliamentary scrutiny of these provisions is sufficient to provide oversight of the guidance flowing from them given national security considerations.

26. Given the content of the guidance issued under clause 29 will relate to the identification of sensitive information it may itself contain information of a sensitive nature and therefore it may be considered appropriate to issue it at a level of government classification not suitable for publication.

Clause 30(1) [Regs9400sos]: Regulations about the holding and handling of information

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution

Context and Purpose

27. This provision confers regulation making powers on the Secretary of State in respect of the holding of information by the ICRIR.

28. Clause 30(1) enables the Secretary of State to make regulations about the holding and handling of information by the ICRIR, including information identified as sensitive information, prejudicial information or protected international information under Schedule 7. These regulations are needed to provide confidence to partners who will be providing information to the ICRIR that this information will be

handled correctly; and to provide the ICRIR with clarity around what is required of it. Regulations may in particular make provision about:

- Notifications to be given by the ICRIR in respect of information it holds;
- Measures for holding information securely, and the destruction or transfer of information;
- Guidance or consultation;
- The conferral of functions on the Secretary of State, the ICRIR, or any other person; and
- The creation of criminal offences, but only relating to the conduct of current or former ICRIR commissioners, officers or contractors, and subject to restrictions on the maximum penalty that may be imposed on conviction.

29. Regulation-making powers under this section are subject to the negative resolution procedure.

Explanation for delegation

30. The power to make provision in respect of the holding of information by the ICRIR deals with matters of detail, which are more appropriate to secondary legislation. In relation to existing bodies, such provision would normally be made using Memoranda of Understanding or service level agreements. However, it is considered appropriate for the purpose of transparency - and given the sensitivity of the issues involved - to include such provisions in secondary legislation to inform the subsequent development of memoranda or agreements. As Government standards on the protection of information develop, this secondary legislation can be amended with the appropriate levels of scrutiny and speed required to reflect those standards.

Explanation for Parliamentary process

31. Regulations made by the Secretary of State are by way of negative resolution in Parliament. As these regulations will relate to procedural matters concerning the holding of information etc, and likely to follow established practice set out in existing regulations, Memoranda of Understanding and service level agreements for other bodies, it is considered that negative resolution procedure will provide appropriate scrutiny.

Clause 31(1) [IRB1080] (Biometric material)

Power conferred on: The Secretary of State

Power exercised by: Regulations made by statutory instrument
Parliamentary procedure: Negative resolution

Context and Purpose

32. Section 9 of the Criminal Justice Act (Northern Ireland) 2013 (which has yet to be brought into force) introduces a new retention regime for biometric data collected under policing powers in Northern Ireland. The new regime is being introduced to address concerns raised in *S and Marper v UK (2008)* which prevents the indefinite retention of biometric material, and is broadly equivalent to the retention regime introduced in England and Wales by the Protection of Freedoms Act 2012. We currently understand from the Department of Justice in NI that they do not expect this part of Criminal Justice Act 2013 to come into force until 2023/24 - meaning material would fall to be deleted before then. Clause 31 confers a power on the Secretary of State to designate in regulations a collection of biometric material, already in existence before the point this bill comes into operation, which will be saved from deletion for ICRIR to use in its investigations.
33. Under this power, the Secretary of State will be able to require the retention, for a time-limited period, of biometrics taken before 31 October 2013, which would otherwise fall for deletion under one of the listed “destruction provisions”. This is essential in order for the ICRIR to have access to this material - relating to legacy cases - to carry out effective investigations and produce reports. It is envisaged that, if possible within the limits of police database functions, the snapshot (provided for in secondary legislation) will be framed by reference to the seriousness of offence for which an individual was arrested, reported or detained, and the age of the individual when arrested, reported or detained. This is still to be determined and is dependent on potential to link relevant biometric data in the retained databases to specific details, as outlined above.
34. Regulations will provide for the exact criteria for the retention of biometric data; as well as the period of retention (which may not be longer than the period of operation of ICRIR); for the use of that material (in connection with ICRIR investigations); and may make further provision about destruction of the material. The regulations will make clear that the material will be for use specifically by the ICRIR for the purposes of its investigations.

35. This power will not enable the ICRIR to take new biometric data from individuals, as this is not seen as either necessary or proportionate.

Explanation for Delegation

36. This power is essential in ensuring the ICRIR is able to retain and access the biometric data it needs to assess in order to conduct Article 2 (ECHR) compliant investigations into Troubles-related incidents. Its use will be proportionate, for the purposes of retaining this data only, and it will not be able to be used for any other purposes.
37. The biometric records from which a collection can be designated have been collected under a number of different statutory powers and are held in a number of different databases and collections, with varying levels of identifying information available and varying ease of access to information.
38. It is considered appropriate for the destruction of such material to be set out in secondary legislation because a very large amount of material is currently retained. Sufficient time needs to be allowed for the exercise of identifying and retaining or destroying this material in appropriate cases, and doing this in primary legislation would be inefficient and unnecessary given the specific nature of the retention criteria that will need to be outlined.
39. The regulation - making power will allow the Secretary of State to retain the biometrics required by ICRIR in connection with its investigations, instead of the alternative of seeking a delay to the implementation of the retention regime in Northern Ireland (expected through the commencement of Criminal Justice Act 2013 in 2023/24).

Explanation for Parliamentary process

40. Regulations made by the Secretary of State are by way of negative resolution in Parliament. The power is for a limited category of biometric material to be retained in prescribed circumstances, for a prescribed purpose, and for a limited amount of time, after which it will fall for deletion. In view of this, the Government considers that the negative resolution procedure allows for the appropriate level of scrutiny.

Clause 33(1) [IRB9100]: Conclusion of the work of the ICRIR

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative resolution

Context and Purpose

44. Clause 33(1) allows for the Secretary of State to, by regulation, make provision for winding up the ICRIR, should they be satisfied that the need for this body to exercise the functions conferred by clause 2(4) has ceased.
45. Clause 33(2) provides that regulations under clause 33(1) may make provision for the transfer of property, rights and liabilities and clause 33(3) further provides for a power to make regulations repealing or otherwise amending most of the provisions of Part 2 of the Bill. Clause 33(5) requires that when deciding whether to exercise any of the powers in this clause, and before making any regulations under it, the Secretary of State must consult the ICRIR and any other person he considers appropriate.

Explanation for Delegation

46. It is important to be clear the operation of the ICRIR will be timebound and not continue indefinitely, which is a critical consideration given the Government's commitment to a way forward on legacy which will be more efficient and provide more timely answers for victims and their families.
47. In the interests of achieving the overriding policy objective in establishing this organisation as well as permitting it to be responsive to its future (currently unknown) caseload, it is proposed that prescribing the date of winding up should be delegated to secondary legislation to allow that decision to be made in full cognisance of the circumstances and the views of relevant stakeholders at the time.

Explanation for Parliamentary process

48. The affirmative procedure is considered appropriate due to the significance and nature of the work being undertaken by the ICRIR as well as the public interest likely to exist with regard to the decision.

Clause 50(1) [OH001s_10],: Designated persons and funding

Power conferred on: Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Negative resolution

Context and Purpose

49. Part 4 provides that certain “designated persons” are to ensure that a wide-ranging programme of memorialisation work is undertaken. The work includes a study of current memorialisation activities with recommendations for new activities, to be set out in a memorialisation strategy; academic research into the Troubles; statistical analysis of the ICRIR’s reports and historical record; a study and analysis of existing Troubles-related oral history records, the creation and preservation of new records, and the encouragement and facilitation of public engagement with oral history records (clauses 43, 44 and 46). The designated persons must also produce annual reports, establish an advisory forum, and are under a duty when carrying out the work to have regard to ensure that the work has the support from different communities and a variety of views of the Troubles is taken into account.

50. Clause 49 states that the Secretary of State may designate a person for the purposes of the above responsibilities if they are satisfied that the person would make a significant contribution to the performance of the functions imposed by clauses clauses 43, 44 and 46. It is envisaged that existing organisations with significant expertise and experience in memorialisation activities and in particular, collecting, storing and presenting oral history records will be designated to carry out the work. Although this is not provided for in the Bill, the designation of any person (including organisations) would not take place without extensive prior discussions and the consent of the person concerned.

Explanation for Delegation

51. There are a range of organisations which could potentially carry out this role, across the museums, libraries and public sectors. Consideration is ongoing as to which of them, and which combination, would be the most appropriate, but engagement has not been able to take place due to the sensitive nature of this Bill before introduction. It would not be appropriate for these organisations to be included on the face of the bill without their prior consent . Designation by

regulations therefore enables the Secretary of State to appoint the most suitable persons to carry out the programme of work when the time comes, with their consent.

Explanation for Parliamentary process

52. The negative procedure is considered appropriate for these regulations. The Bill clearly sets out the programme of work, the duties on the designated persons and factors to which the Secretary of State must have regard when designating a person. In the circumstances, no additional scrutiny is deemed necessary.

Clause 51(1) [OH001s_11] Interpretation of this Part

Power conferred on: Secretary of State
Power exercisable by: Regulations made by statutory instrument
Parliamentary Procedure: No procedure

Context and Purpose

53. Under subsection (1), “specified day” means the day specified in regulations made by the Secretary of State for the purposes of commencing the Troubles-related programme of work

Explanation for delegation

54. This allows for the necessary foundation (i.e. designating persons) to be set before commencing the provisions in relation to the Troubles-related programme of work.

Explanation for Parliamentary process

55. It is usual for commencement regulations to be subject to no Parliamentary procedure. The expectation is that primary legislation that has been debated by Parliament will be brought into force by the Government at the most convenient time.

Clause 52(2) [Cons001] Consequential provision

Power conferred on: Secretary of State, the Department of Justice in Northern Ireland and Scottish Ministers
Power exercisable by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative when amending primary legislation, otherwise negative

Context and Purpose

56. This Bill establishes the ICRIR with a wide range of differing functions relating to the whole of the UK and makes provision relating to the prohibition and in some cases, cessation of legal proceedings across the UK. In order for the ICRIR to function appropriately, a number of pieces of legislation (including court and coronial rules) need to be amended by the appropriate national authority, defined in the Bill as the Secretary of State, the Department of Justice in Northern Ireland or the Scottish Ministers. As the ICRIR carries out its functions, further amendment may be necessary. Clause 52(2) provides the power to make the necessary amendments. This power allows the Secretary of State, the Department of Justice in Northern Ireland, or the Scottish Ministers “(national authorities)” to make any amendment to primary or secondary legislation, whenever passed, that is consequential on the provisions in the Bill. Restrictions tied to the limits of devolved competence apply when the power is exercised by the Department of Justice in Northern Ireland or the Scottish Ministers (see clause 53(6) and (7).

57. Paragraph 14(1) of Schedule 2 sets out further consequential provision which can be made by an appropriate national authority under the subsection (2) powers. The appropriate national authority can make such provision as it considers appropriate in consequence of designated ICRIR officers having the powers and privileges of constable which are bestowed by virtue of Schedule 2 (where “designated ICRIR officers”, and “operational powers” are defined). Those regulations may provide for:

- exemption from certain obligations or penalty that might apply in respect of the exercise of operational powers by designated ICRIR officers;
- the disclosure of information to, or the doing of other things in relation to, designated ICRIR officers;
- the conferral of functions on ICRIR officers or any other person;
- classes of ICRIR officers howsoever identified to be treated as equivalent to specifically identified ranks of the police;
- the application (with or without modifications) of any legislation.

Explanation for delegation

58. It is standard for legislation to be amended in order to allow for consequential changes in circumstance, for example in this case in the way that the ICRIR carries out its functions. Should minor legislative change be required to remove obstacles and facilitate the new processes it is most appropriate for these to be done in secondary legislation. Some amendments to primary legislation have been made on the face of the bill and the Government will endeavour to identify further necessary consequential amendments to primary legislation, but it is possible that some may not be identified until later, and it will be necessary to make consequential amendments to secondary legislation.
59. The power to make provision in respect of the conferral of powers and privileges of a constable on ICRIR designated officers deals with matters of detail, which are more appropriate being addressed via secondary legislation. A similar power exists in relation to the operational powers of NCA officers, in paragraphs 27 to 30 of Schedule 5 to the Crime and Courts Act 2013.

Explanation for Parliamentary process

60. Regulations under this clause which amend or repeal primary legislation (including Northern Ireland legislation or an Act of the Scottish Parliament) are subject to the affirmative resolution procedure which is the appropriate level of scrutiny for exercise of such wide-ranging powers and will allow for full Parliamentary debate. Where the amendment is of secondary legislation only, or stand alone provision is made, the negative resolution procedure is considered to be more appropriate.
61. The power to make provision in respect of the conferral of powers and privileges of a constable is consistent with comparable existing powers. The Secretary of State's power to make provision in relation to operational powers of NCA officers is by negative resolution in Parliament, unless it amends or repeals any provision of primary legislation, which does not apply in this case (see section 58(5) of the Crime and Courts Act 2013).

Clause 52(8) [Cons001] Consequential provision (power to change references to dates in the Bill)

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
	<i>Parliamentary Procedure: no procedure</i>

Context and Purpose

62. Subsection (8) of the clause also confers a power on the Secretary of State to amend references in this Bill to the commencement of a provision or the date of First Reading to references to the actual date that it came into force, in line with best practice.

Explanation for delegation

63. This new power will enable clarification of the Bill's provision by amending all relevant clauses with the relevant commencement date or date of First Reading of the Bill. Clause 52(8) seeks to replicate the effect of section 104(1) of the Deregulation Act 2015, which already provides a general power on Ministers of the Crown to make regulations to this effect in relation to any legislation. However, section 104(4) and (5) of the Deregulation Act 2015 disapply that power in relation to any provision that would be within the competence of the Northern Ireland Assembly or the Scottish Parliament. Relevant provisions in this Bill do fall into that category and therefore the power in section 104(1) cannot be used.

Explanation for Parliamentary process

64. There is no Parliamentary scrutiny for regulations made under this clause which follows the procedure for regulations made under section 104(1) of the Deregulation Act 2015. This is appropriate given that regulations made under this section make a purely technical change which is designed to clarify the effect of the legislation.

Clause 57[Final 2]: Commencement

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>No procedure</i>

Context and Purpose

65. Subsection (3) of clause 56 creates a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations, other than provisions which commence at Royal Assent (subsection (1)) and the

provisions which subsection (2) provides come into force at the end of the period of two months beginning with Royal Assent. Commencement regulations made under this power may appoint different commencement dates for different purposes or areas.

66. Subsection (4) creates a power for a national authority to make regulations to make transitory, transitional or saving provision in connection with the coming into force of any provision of the Bill

67. The purpose of allowing the Secretary of State to commence elements of the Bill in stages provides flexibility for practical implementation reasons.

Explanation for Delegation

68. This power to select variable commencement dates is necessitated by the variety of provisions within the Bill, including the creation of a new statutory body. The ability to control the commencement of certain elements of the bill will enable the Secretary of State to decide at a later date - in fuller knowledge of the circumstances, including through consultation with others - when the different provisions might be most appropriately commenced.

Explanation for Parliamentary process

69. It is usual for commencement regulations to be subject to no Parliamentary procedure. The expectation is that primary legislation that has been debated by Parliament will be brought into force by the Government at the most convenient time.

Northern Ireland Office

07 July 2022