

**NORTHERN IRELAND OFFICE SUPPLEMENTARY MEMORANDUM FOR THE  
DELEGATED POWERS AND REGULATORY REFORM COMMITTEE**

**THE NORTHERN IRELAND (EXECUTIVE FORMATION) BILL**

**Introduction**

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Northern Ireland (Executive Formation Bill (“the Bill”). The Bill was introduced in the House of Commons on 4 July 2019 and passed all Commons stages. It was introduced in the House of Lords 9 July 2019. Lords’ Committee stage was on 15 July and Report and Third Reading are on 17 July. There was one amendment which contains delegated powers that the Government supported (amendment 17 tabled by Lord Hain). This supplementary memorandum addresses that one amendment only.
2. The Background to the Bill is set out in the Department’s memorandum of 3 July. Following amendments made in the Commons, on 12 July the Department sent a letter to the Committee explaining the effect of two non-Government amendments that had been made to the Bill and which included contained delegated powers.

**Delegated Power**

***New clause (amendment 17): Victims’ payments***

*Power conferred on: the Secretary of State*

*Power exercised by: regulations*

*Parliamentary Procedure: negative resolution procedure*

**Context and purpose**

3. Amendment 17 requires the Secretary of State to establish, by regulation, a scheme of payments for individuals injured in the Troubles. This is further to the commitment set out in paragraph 28 of the 2014 Stormont House Agreement to find a way to provide a “pension” for those most seriously injured in the Troubles.
4. Those regulations must be made before the end of January 2020 and come into force before the end of May 2020; they will be subject to the negative resolution procedure in Parliament. If a Northern Ireland Executive is formed before the regulations come into force then both the regulations themselves and the duty to make them will cease to have effect.
5. Lord Hain tabled an amendment (that was deficient in the Government’s view) for consideration at Committee stage which he withdrew on the understanding that the Government would work with him to correct it - it was clear that he had wide support on the matter from across the House; the Government faced similar calls to act in this area in the House of Commons debate last week.

6. A revised set of clauses were tabled by Lord Hain. The Government accepted them in light of the settled view of the House and because the amendment was made operable (Lord Hain had previously pushed for the regulations to have been in effect from October 2019, which was not achievable).
7. Subsections (1) and (2) of the new clause set the requirement for regulations establishing the scheme to be made before the end of January 2020 and come into force before the end of May 2020. Subsection (3) provides flexibility around the basis on which the regulations can determine the parameters for eligibility for payments under the scheme. For instance, (3)(b) and (d) (together) would allow individuals convicted of an offence connected with the incident in which they sustained their injury to be excluded from the scheme.
8. Subsection (4) enables the regulations to provide for reimbursement of costs by applicants in making an application (for instance for obtaining a copy of a GP's report). Subsection (5) enables the regulations to (a) determine the level of payments (e.g. set rates), (b) provide for back payments, (c) reduction or repayment of amounts (for instance where there is fraud or overpayment), and (d) their treatment under other legislation (for example how they are to be treated when calculating an individual's relevant assets under social security legislation).
9. Subsection (6) requires the regulations to make provision ensuring that injured individuals who are eligible for the scheme who make an application within a period specified in the scheme (which continues for a minimum of two years after the scheme comes into force) will be entitled to a back payment. The back payment will be reflective of the amount that the person would have received had the scheme been in place since the Stormont House Agreement was made.
10. Subsection (7) enables the regulations to make provision for various practical matters, including administration of the scheme (including creation of its administrative body), its funding from the Northern Ireland consolidated fund, evidential matters and provisions to enable information sharing between public authorities (for the purpose of assessing claims), the application process, reviews and appeals of decisions, and support to be given to applicants such as information, advice and assistance.
11. Subsection (8) allows the regulations to confer discretion on an individual. This might be used, for instance, to enable the scheme administrator to award payments on a discretion basis to the terminally ill etc.
12. Subsection (9)(a) allows the regulation to amend legislation made by an Act of Parliament or Northern Ireland legislation. This is required to make amendments to connecting primary legislation, such as existing social security legislation. Subsection (9)(b) also allows ancillary provision to be made in respect of Welsh and Scottish primary legislation.

### Explanation for delegation

13. It would not have been possible to include provision for victims' payments on the face of the Bill as further detailed policy and implementation work is still required to establish how it will operate. A non-Government amendment was tabled at Committee stage in the House of Lords to make provision by regulations (under the negative procedure) and it was clear that had it not been for Lord Hain's commitment to work with the Government to make it operable and not deficient, the amendment would have passed with overwhelming support. The amendment was almost identical in structure, approach and delegation to those added to the Bill by the House of Commons concerning same-sex marriage and abortion. The aim of this clause is to ensure that regulations can give effect to that amendment in a way which provides legal certainty and will enable all relevant matters to be included.

### Explanation for the procedure

14. The regulation will be subject to the negative resolution procedure. The Government accepts that this is novel - it is a wide power and enables amendment of primary legislation, as well as legislating for new social policy. Ideally, the Government would aim to introduce detailed primary legislation for this scheme or make regulations subject to the affirmative procedure. However, due to the challenging timetable being committed to we do not believe it would be feasible to make provision in this way. Similarly, ensuring that the scheme is operationally ready by end-May 2020 will be very challenging but we recognise that the House wants to see urgent progress in this area, and victims and survivors have been promised such a scheme since 2014.
15. The Government accepts that the made-affirmative procedure would provide more scrutiny, however, it believes this would have created an unacceptable degree of uncertainty around the establishment of the scheme (affecting issues such as the creation of the body administering the scheme) and the timeline for availability of payments to injured individuals. The Government also believes that it is right to accept the approach that the House has decided it wishes to see taken across a range of substantive policy areas through this Bill, and does not wish to challenge that approach further, having spelled out options and approaches in various meetings and discussions.

**Northern Ireland Office**

**18 July 2019**

## ANNEX A

### LORDS AMENDMENTS TO THE NORTHERN IRELAND (EXECUTIVE FORMATION) BILL

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*[The page and line references are to HL Bill 190, the bill as first printed for the Lords]*

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#### Clause 3

- 1 Page 2, line 17, leave out subsection (2) and insert –
- “(2A) The Secretary of State must make arrangements for –
- (a) a copy of each report published under subsection (1) to be laid before each House of Parliament by the end of the day on which it is published,
  - (b) a motion in neutral terms, to the effect that the House of Commons has considered the report, to be moved in the House of Commons by a Minister of the Crown, and
  - (c) a motion for the House of Lords to take note of the report to be tabled in the House of Lords and moved by a Minister of the Crown.
- (2B) The motions required under subsections (2A)(b) and (c) must be moved in the relevant House by a Minister of the Crown within the period of five calendar days beginning with the end of the day on which the report is laid before Parliament.”
- 2 Page 2, line 21, at end insert –
- “( ) The report under subsection (1) must include a report on progress made towards preparing legislation to provide for transparency of political donations and loans from 1 January 2014.”
- 3 Page 2, line 21, at end insert –
- “( ) The report under subsection (1) must include a report on the improvement of higher education provision in Northern Ireland and the establishment of a university whose principal campus is in Derry/Londonderry.”
- 4 Page 3, line 2, at end insert –
- “(f) delivering regulatory alignment between Northern Ireland and the rest of the United Kingdom in regard to gambling.”

- 5 Page 3, line 39, at end insert –  
“( ) The Secretary of State must, on or before 21 October 2019, publish a report on progress on the establishment of a Renewable Heat Incentive Hardship Unit in the Department for the Economy (unless an Executive has already been formed).”
- 6 Page 3, line 39, at end insert –  
“( ) The Secretary of State must, on or before 21 October 2019, publish a report on progress on libel legislation in Northern Ireland and any plans to align Northern Irish legislation with libel legislation in the rest of the United Kingdom (unless an Executive has already been formed).”
- 7 Page 3, line 39, at end insert –  
“( ) The Secretary of State must, on or before 21 October 2019, publish a report on progress of the implementation of the Protect Life 2 – Strategy for Suicide Prevention in Northern Ireland (unless an Executive has already been formed).”
- 8 Page 3, line 39, at end insert –  
“( ) The Secretary of State must, on or before 21 October 2019, publish a report on an assessment of how much demand there is for elective care services and how this is exceeding health service capacity for both new and existing patients across Northern Ireland, and detailing each of the current measures being taken to reduce health and social care waiting times, as well as those that are planned, and the impact of NHS waiting times on children (unless an Executive has already been formed).”
- 9 Page 3, line 39, at end insert –  
“( ) The Secretary of State must, on or before 1 December 2019, publish a report on the future welfare mitigation support measures that will be in place after March 2020 (unless an Executive is formed on or before 1 December 2019).”

#### Clause 8

- 10 Page 5, line 33, leave out subsections (1) to (4) and insert –  
“(1) The Secretary of State must, by regulations, make provision so that –  
(a) two persons who are of the same sex are eligible to marry in Northern Ireland, and  
(b) two persons who are not of the same sex are eligible to form a civil partnership in Northern Ireland,  
provided that, apart from the question of sex, they would be eligible to marry or form a civil partnership (as the case may be).  
(2) Regulations under subsection (1) must be made so as to come into force on or before 13 January 2020 (but this does not in any way limit the re-exercise of the power).  
(3) The Secretary of State may, by regulations, make any other provision that appears to the Secretary of State to be appropriate in view of –  
(a) the extension of eligibility to marry in Northern Ireland to persons of the same sex, and

- (b) the extension of eligibility to form civil partnerships in Northern Ireland to persons who are not of the same sex.
- (4) Regulations under subsection (3) may, in particular, make provision about –
- (a) parenthood and parental responsibility of parties to a marriage or civil partnership;
  - (b) the application by a party to a marriage or civil partnership for a gender recognition certificate under the Gender Recognition Act 2004, or the issuing of such a certificate, and the consequences of that application or issuing for the marriage or civil partnership;
  - (c) the financial consequences of marriage or civil partnership (for example, in relation to pensions or social security);
  - (d) the treatment under the law of Northern Ireland of marriages, civil partnerships or relationships similar to civil partnerships formed outside of Northern Ireland.
- (5) The Secretary of State may, by regulations, make provision for and in connection with a right to –
- (a) convert a marriage into a civil partnership;
  - (b) convert a civil partnership into a marriage.
- Such regulations may, in particular, make provision equivalent or similar to that contained in or authorised by section 9 of the Marriage (Same Sex Couples) Act 2013.
- (6) The Secretary of State may, by regulations, make any provision that the Secretary of State considers appropriate in order to protect the ability to act in accordance with religious or other belief or opinion in relation to marriage or civil partnership (including the conversion of marriage into civil partnership and vice versa).
- (7) Regulations under this section –
- (a) may make provision for fees to be payable;
  - (b) may make provision conferring a discretion on a person;
  - (c) may make provision enabling a person to make regulations (and such regulations may make provision for fees to be payable);
  - (d) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation;
  - (e) may, in so far as made in reliance on section (*Regulations: supplementary*)(2), include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.
- (8) In this section –
- (a) references to marriage in Northern Ireland (however expressed) include references to marriage outside of the United Kingdom by virtue of eligibility to marry in Northern Ireland (in accordance with Part 1 or Part 3 of Schedule 6 to the Marriage (Same Sex Couples) Act 2013);
  - (b) references to forming a civil partnership in Northern Ireland include references to registering as civil partners outside the United Kingdom by virtue of eligibility to do so in Northern Ireland (in accordance with section 210(2)(b) or 211(2)(b) of the Civil Partnership Act 2004)."

**Clause 9**

11 Page 6, line 2, leave out subsections (1) to (4) and insert –

- “(1) The Secretary of State must ensure that the recommendations in paragraphs 85 and 86 of the CEDAW report are implemented in respect of Northern Ireland.
- (2) Sections 58 and 59 of the Offences Against the Person Act 1861 (attempts to procure abortion) are repealed under the law of Northern Ireland.
- (3) No investigation may be carried out, and no criminal proceedings may be brought or continued, in respect of an offence under those sections under the law of Northern Ireland (whenever committed).
- (4) The Secretary of State must by regulations make whatever other changes to the law of Northern Ireland appear to the Secretary of State to be necessary or appropriate for the purpose of complying with subsection (1).
- (5) Regulations under subsection (4) must, in particular, make provision for the purposes of regulating abortions in Northern Ireland, including provision as to the circumstances in which an abortion may take place.
- (6) Regulations under subsection (4) must be made so as to come into force by 31 March 2020 (but this does not in any way limit the re-exercise of the power).
- (7) The Secretary of State must carry out the duties imposed by this section expeditiously, recognising the importance of doing so for protecting the human rights of women in Northern Ireland.
- (8) The Secretary of State may by regulations make any provision that appears to the Secretary of State to be appropriate in view of subsection (2) or (3).
- (9) Regulations under this section may make any provision that could be made by an Act of the Northern Ireland Assembly.
- (10) In this section “the CEDAW report” means the Report of the Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/OP.8/GBR/1) published on 6 March 2018.”

**After Clause 9**

12 Insert the following new Clause –

**“Victims’ payments**

- (1) The Secretary of State must by regulations establish a scheme under the law of Northern Ireland which provides for one or more payments to be made to, or in respect of, a person who has sustained an injury as a result of a Troubles-related incident.
- (2) The first regulations under subsection (1) must be made before the end of January 2020 and come into force before the end of May 2020.
- (3) Regulations under subsection (1) must make provision as to the eligibility criteria for payments under the scheme which may, in particular, relate to –
  - (a) the nature or extent of a person’s injury;

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- (b) how, when or where the injury was sustained;
  - (c) residence or nationality;
  - (d) whether or not a person has been convicted of an offence.
- (4) Regulations under subsection (1) may make provision for the reimbursement of costs incurred by a person in connection with an application under the scheme (whether or not the application is successful).
- (5) Regulations under subsection (1) may, in particular, make provision –
- (a) for determining the amount of any payment;
  - (b) for payments to be made in respect of past periods (including periods before this Act was passed);
  - (c) for payments to be reduced or repaid (in whole or in part) in specified circumstances;
  - (d) about the treatment under other legislation (for example social security legislation) of payments under the scheme.
- (6) Regulations under subsection (1) must make provision of the kind mentioned in subsection (5)(b) so as to ensure that where –
- (a) a person is eligible under the scheme as the result of an injury sustained by that person before the scheme comes into force, and
  - (b) the person makes an application within a period specified in the regulations (which must not be less than the period of two years beginning with the day on which the scheme comes into force),
- the person is entitled to a payment to reflect the amount that the person would have received had the scheme been in force since the making of the Stormont House Agreement.
- (7) Regulations under subsection (1) may, in particular, make provision about –
- (a) the administration of the scheme (including provision establishing a body or conferring functions on an existing body);
  - (b) the funding of the scheme by money from the Consolidated Fund of Northern Ireland (whether by virtue of grant funding from a Northern Ireland department, the appropriation of money by an Act of the Northern Ireland Assembly or otherwise);
  - (c) the sharing of information between public authorities for the purposes of the scheme;
  - (d) evidential matters;
  - (e) the procedure for the making and deciding of applications (including provision imposing time limits);
  - (f) appeals and reviews;
  - (g) information, advice or assistance in relation to the scheme or payments under it.
- (8) Regulations under subsection (1) may make provision conferring a discretion on a person.
- (9) Regulations under subsection (1) –
- (a) may include provision amending, repealing or revoking any provision made by an Act of Parliament or Northern Ireland legislation, and

- (b) in so far as made in reliance on section (*Regulations: supplementary*)(2), may also include provision amending or repealing provision made by an Act or Measure of the National Assembly for Wales or an Act of the Scottish Parliament.
- (10) In making the first regulations under this section the Secretary of State must have regard to any advice given by the Commission for Victims and Survivors for Northern Ireland.
- (11) In this section –
- “injury” means any illness or injury (whether physical or mental);
  - “the Stormont House Agreement” means the agreement made between parties represented in the Northern Ireland Assembly, the Government of the United Kingdom and the Government of Ireland on 23 December 2014;
  - “Troubles-related incident” means an incident involving an act of violence or force carried out in Ireland, the United Kingdom or anywhere in Europe for a reason related to the constitutional status of Northern Ireland or to political or sectarian hostility between people there.”

#### After Clause 9

13 Insert the following new Clause –

**“Regulations: supplementary**

- (1) A power to make regulations under section 8, 9 or (*Victims’ payments*) may be used to make different provision for different purposes.
- (2) Regulations under section 8, 9 or (*Victims’ payments*) may make incidental, supplementary, consequential, transitional or saving provision.”

14 Insert the following new Clause –

**“Regulations: procedure**

- (1) Regulations under section 8, 9 or (*Victims’ payments*) are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 8 or (*Victims’ payments*) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) A statutory instrument containing regulations under section 9 must be laid before Parliament after being made.
- (4) Regulations contained in an instrument laid under subsection (3) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (5) In calculating the period of 28 days mentioned in subsection (4), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (6) If regulations cease to have effect as a result subsection (4), that does not affect –
  - (a) anything previously done under them, or

(b) the making of new regulations.”

**Clause 10**

- 15 Page 6, line 18, leave out subsection (1) and insert –  
 “(1) Except as mentioned in subsection (1A), this Act extends to England and Wales, Scotland and Northern Ireland.  
 (1A) Section 9 extends to Northern Ireland only.”
- 16 Page 6, line 19, leave out subsection (2) and insert –  
 “(2) Except as mentioned in subsection (2A), this Act comes into force on the day on which it is passed.  
 (2A) Sections 8, 9, (*Victims’ payments*), (*Regulations: supplementary*) and (*Regulations: procedure*) come into force on 22 October 2019, unless an Executive in Northern Ireland is formed on or before 21 October 2019 (in which case they do not come into force at all).  
 (2B) For the purposes of this section an Executive is formed once the offices of the First Minister, deputy First Minister and the Northern Ireland Ministers are all filled.”
- 17 Page 6, line 20, after “Formation” insert “etc”

**In the Title**

- 18 Line 4, at end insert “and other matters; to impose duties to make regulations changing the law of Northern Ireland on certain matters, subject to the formation of an Executive; and for connected purposes.”