Foreign and Commonwealth Office Departmental Minute dated 14 January 2020 on indemnity for Special Representative on UK Victims of Qadhafi-sponsored IRA terrorism

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £300,000 for which there is no specific statutory authority, for the Minister concerned to present a Departmental Minute to Parliament giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen Parliamentary sitting days after the issue of the Minute, except in cases of special urgency.

The Foreign Secretary on 4 October formally commenced the appointment of Mr William Shawcross as his Special Representative on UK victims of Qadhafi-sponsored IRA terrorism. The Special Representative's work has the support of the National Security Council and other relevant Whitehall departments and reflects HMG's strong commitment to support all UK victims of Libyan-sponsored IRA terrorism. This in turn reflects HMG's commitment to supporting victims of violence and terrorism more widely.

In the first instance the Special Representative will be asked to carry out a Scoping Exercise working for up to eight days a month for a period of up to six months. The focus of the Scoping Exercise will be on investigating the feasibility of calculating a precise number of people affected and the amount of compensation due to them from the Libyan Government. HMG believes this is an important preliminary step to making wider progress.

The Special Representative will be asked to consult widely during the Scoping Exercise, including with victims' groups, victims' representatives and Parliamentarians. This is in order to gather information regarding the number of victims and different types of loss suffered, their views on the purpose(s) to be served by compensation and their desired outcomes.

In his initial Scoping Exercise, the Special Representative will also be asked to consider precedents for compensation payments by third parties (i.e. parties that have assisted terrorist acts, but not directed or undertaken them) and the nature of compensation arrangements already reached with Libya. The Special Representative will submit an internal report on the outcome of the Scoping Exercise to the Foreign Secretary.

In consultation with other Government departments, the Foreign Secretary will decide whether to make any public announcement at that stage, including whether to publish any elements of the Special Representative's report and/or to make them available to any stakeholders; and, in light of the Scoping Exercise, will decide whether the Special Representative's work should proceed to a further "Review" phase and (in due course) to "Next Steps". The precise terms of reference for the potential second and third phases of work would be determined in light of the Special Representative's report(s).

The Foreign and Commonwealth Office (FCO) believes that it is reasonable to assure the Special Representative that, provided he acts honestly, reasonably, in good faith and without negligence in the performance of his obligations under the terms and conditions agreed with him, he should be indemnified against any liability arising from the execution or purported execution of his appointment as Special Representative.

The FCO notified Parliament of its intention to undertake this contingent liability on 15 October 2019. As Parliament dissolved before the 14 sitting days required for its consideration expired, the Departmental Minute is being re-laid today in the House of Commons.

The Special Representative and FCO will take every step to make clear to victims and their representatives that, while the Special Representative's work is designed to support progress, neither he nor HMG is able to undertake that individuals who have been affected directly or indirectly by Qadhafi-sponsored IRA terrorism will receive compensation from the Libyan government and/or any other redress as a result of the Special Representative's work, whether following the initial Scoping Exercise or any subsequent stages of activity. The Special Representative and FCO will take every step to minimise any distress to victims that may be caused by the Special Representative's work.

The FCO judges the risk of incurring liability to be extremely low but believes that HMG should provide an uncapped indemnity as the Special Representative's work potentially engages the interest of thousands of people and as some past compensation arrangements reached with Libya have been large in scale.

Providing a suitable indemnity is part of enabling the Special Representative to take forward his role effectively. The FCO is the immediate beneficiary of the indemnity in terms of receiving the advice provided by the Special Representative.

If the liability is called, provision for any payment will be sought through the normal Supply procedure.

The Treasury has approved the proposal in principle. If, during the period of fourteen parliamentary sitting days beginning on the date on which this Minute was laid before Parliament, a member signifies an objection by giving notice of a Parliamentary Question or by otherwise raising the matter in Parliament, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.

Foreign and Commonwealth Office

14 January 2020