

HOUSE OF LORDS

Delegated Powers and Regulatory Reform  
Committee

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9th Report of Session 2022–23

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

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### *The Delegated Powers and Regulatory Reform Committee*

The Committee is appointed by the House of Lords each session and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
  - (b) section 7(2) or section 19 of the Localism Act 2011, or
  - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
  - (a) section 85 of the Northern Ireland Act 1998,
  - (b) section 17 of the Local Government Act 1999,
  - (c) section 9 of the Local Government Act 2000,
  - (d) section 98 of the Local Government Act 2003, or
  - (e) section 102 of the Local Transport Act 2008.

### *Membership*

[Baroness Browning](#)

[Lord Cunningham of Felling](#)

[Lord Goddard of Stockport](#)

[Lord Haselhurst](#)

[Lord Hendy](#)

[Lord Janvrin](#)

[Lord McLoughlin](#) (Chair)

[Baroness Meacher](#)

[Lord Rooker](#)

[Lord Tope](#)

### *Registered Interests*

Committee Members' registered interests may be examined in the online Register of Lords' Interests at [www.parliament.uk/hlregister](http://www.parliament.uk/hlregister). The Register may also be inspected in the Parliamentary Archives.

### *Publications*

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### *General Information*

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### *Contacts for the Delegated Powers and Regulatory Reform Committee*

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is [hldelgatedpowers@parliament.uk](mailto:hldelgatedpowers@parliament.uk).

### *Historical Note*

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

# Ninth Report

## NORTHERN IRELAND TROUBLES (LEGACY AND RECONCILIATION) BILL

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1. This Bill came to the House of Lords on 5 July 2022. The Bill's purpose is to implement a range of measures to address the legacy of the Northern Ireland Troubles. The Bill:
  - establishes an Independent Commission for Reconciliation and Information Recovery (“the ICRIR”),
  - limits criminal investigations, legal proceedings, inquests and police complaints,
  - extends the prisoner release scheme in the Northern Ireland (Sentences) Act 1998, and
  - provides for experiences to be recorded and preserved and for events to be studied and memorialised.
2. We have been provided with a delegated powers memorandum (“the Memorandum”)<sup>1</sup> from the Northern Ireland Office. Some of its explanations are very brief, even inscrutable. We draw attention to three delegated powers in the Bill.

### Clause 19(9)

3. Clause 18 allows the ICRIR to grant immunity from prosecutions. Clause 19 states that there is no immunity for “Troubles-related sexual offences”.
  - “Troubles-related” is defined in clause 1.
  - Clause 19(7) states that “sexual offence” includes
    - (a) rape;
    - (b) any offence committed by
      - (i) sexual assault,
      - (ii) sexual activity, or
      - (iii) causing or inciting another person to engage in sexual activity;
    - (c) any offence relating to indecent images of children.
4. Clause 19(9) allows the Secretary of State to define in regulations what is meant by “sexual offence” including provision specifying offences which are to comprise, or to be included in, that definition.
5. The Memorandum (paragraph 12) gives a brief and unsatisfactory explanation for this delegation of power. The power has been given “in order to ensure that all relevant sexual offences are captured”.

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<sup>1</sup> Northern Ireland Office, [Delegated Powers Memorandum](#), dated 7 July 2022.

6. The Department makes no attempt to explain why all relevant sexual offences cannot be captured on the face of the Bill. Clause 19(7) defines “sexual offence”. If this does not suffice, the Department does not explain why not. There is no reason why a Bill should not include an exhaustive definition. Indeed, in a controversial area such as this, there are reasons of clarity and transparency why the Bill should do so. The power in clause 19(9) might be used to widen the meaning of sexual offence in clause 19(7) and in a way that might be controversial.
7. Furthermore, regulations under clause 19(9) only attract the negative procedure. The Memorandum (paragraph 13) justifies this as follows:
- “As these regulations will relate to the definition of sexual offence, it is considered that [the] negative resolution procedure will provide appropriate scrutiny.”
8. But *why* is the negative procedure appropriate for regulations relating to the definition of “sexual offence”? The power to grant immunity from prosecution is obviously significant. The power of the Minister to make regulations in relation to sexual offences impacts the ICIR’s jurisdiction to grant immunity. The Department makes no attempt to justify the negative procedure any more than it satisfactorily justifies the existence of the power in clause 19(9). **The delegated power in clause 19(9) is inappropriate and should be removed from the Bill.**

### Clause 21

9. Clause 21 allows the Secretary of State to issue guidance in relation to the determination of applications for immunity from prosecution, to which the immunity requests panel must have regard. The guidance can cover:
- whether an account of a person’s conduct is true to the best of a person’s knowledge and belief;
  - whether something may be 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).
10. The guidance clearly covers significant matters, but it is governed by no parliamentary procedure. The explanation in the Memorandum (paragraph 20) for the lack of any parliamentary procedure is baffling:
- “The detail of guidance provided will follow the primary legislation being scrutinised by Parliament.”
11. This one-sentence explanation does not constitute a satisfactory explanation for the absence of any parliamentary procedure for the guidance issued under clause 21. **The statutory guidance in clause 21 should be subject to a parliamentary procedure, whether the affirmative or the negative.**

**Clause 33(1)**

12. Although the ICRIR will be created by Parliament, clause 33(1) allows Ministers to wind it up by affirmative regulations. We have previously commented on the undesirability of public bodies created by Parliament being abolished by Ministers. What Parliament has created should be for Parliament to abolish.
13. The Memorandum (paragraphs 46-47) offers two reasons for the power. First, it is “critical” that the operation of the ICRIR should be “timebound and not continue indefinitely”. Second, allowing the body to be abolished by regulations allows the abolition to be made “in full cognisance of the circumstances and the views of relevant stakeholders at the time”.
14. Neither of these reasons is satisfactory.
  - The Government say that the ICRIR should not continue indefinitely. But this is the result achieved by the Bill. “Indefinitely” means for an unlimited or unspecified period of time. As things stand, the ICRIR can continue in existence for an unspecified period of time. If the Government wish to place a definite time-limit on the existence of the ICRIR, they need a conventional sunset clause specifying the time they have in mind. If the Government do not have a definite time in mind, why do they argue against the ICRIR existing indefinitely?
  - As for the argument that abolition at some indefinite future date enables the decision to be made in full knowledge of the circumstances and the views of stakeholders, this is equally an argument for Parliament to make the decision in due course rather than the matter being delegated to Ministers.
15. **The delegated power in clause 33(1) is inappropriate and should be removed from the Bill.**

## APPENDIX 1: MEMBERS' INTERESTS

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 18 July 2022, Members declared no interests.

### **Attendance**

The meeting was attended by Baroness Browning, Lord Janvrin, Lord Haselhurst, Lord Hendy, Lord McLoughlin, Baroness Meacher, Lord Rooker and Lord Tope.