

Legislative Consent Memorandum

Victims and Prisoners Bill

Background

1. This memorandum has been lodged by Neil Gray MSP, Cabinet Secretary for NHS Recovery, Health and Social Care, under Rule 9B.3.1(c) of the Parliament's standing orders. The Victims and Prisoners Bill was introduced in the House of Commons in March 2023. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/3443>

Content of the Victims and Prisoners Bill

2. The Bill's long title describes it as a Bill to make provision about victims of criminal conduct and others affected by criminal conduct; about the appointment and functions of advocates for victims of major incidents and for an Infected Blood Compensation Scheme; about the release of prisoners; about the membership and functions of the Parole Board; to prohibit certain prisoners from forming a marriage or civil partnership; and for connected purposes.

3. Part 3 of the Bill covers the establishment of a body to provide compensation to infected blood victims and provision to make further interim payments to personal representatives of qualifying infected persons.

Provisions which extend to Scotland within the devolved competence of the Scottish Parliament

4. The great majority of the Bill's provisions do not extend to Scotland (and those that do have, until now, related to reserved matters). However, the UK Government lodged amendments on 17 April 2024 to replace the previous Part 3 provision that was included in the Bill in the House of Commons, following an amendment being lodged by Dame Diana Johnson MP relating to compensation for victims of the infected blood scandal. If the UK Government amendments pass, the following provisions will extend to Scotland and be within competence of the Scottish Parliament:

- Part 3 and Schedule (Infected Blood Compensation Body)

And to the extent that they relate to Part 3 of the Bill:

- Clause 58 (power to make consequential provision)
- Clause 59 (regulations)
- Clause 60 (extent)
- Clause 61 (commencement)

Reasons for submitting a legislative consent memorandum

5. Whilst initially Part 3 did not extend to Scotland, the UK Government amendments of 17 April 2024, if passed, would amend Part 3 and the new Part 3 would extend to Scotland and Northern Ireland as well as England and Wales. The Bill would then be considered to be a relevant Bill under Rule 9B.1.1 of the Standing Orders, as it makes provision which applies to Scotland for purposes within the legislative competence of the Scottish Parliament – in other words it would be within the competence of the Scottish Parliament to establish an equivalent compensation scheme for Scotland as the compensation relates to health matters. A legislative consent motion is also required because the amendments would also alter the executive competence of the Scottish Ministers by creating a new regulation-making power for the Scottish Ministers to make any necessary consequential amendments to facilitate the compensation scheme.

6. The UK Government amendments will establish a body corporate called the Infected Blood Compensation Authority (“IBCA”) and require the Secretary of State or the Minister for the Cabinet Office to establish a compensation scheme to be delivered by the IBCA, which would provide compensation to those infected or affected with hepatitis and/or HIV by NHS blood, tissue or blood products. The amendments will also require the Secretary of State or Minister for the Cabinet Office to make arrangements for further interim compensation payments to personal representatives of qualifying infected persons. It would be within devolved competence to establish such a scheme and to make such payments in Scotland as this will be a compensation scheme relating to health in response to actions of the NHS in Scotland (as well as other parts of the UK).

7. The Infected Blood Inquiry’s Second Interim report¹ recommended a UK-wide scheme and that anyone eligible for any of the past or existing financial support schemes (including the Scottish Infected Blood Support Scheme (“SIBSS”)) should be eligible for compensation. The Second Interim report also recommended that further interim compensation payments of £100,000 should be made to relatives of infected persons, following the £100,000 interim payments made to infected persons and their bereaved partners in October 2022 as recommended by the Inquiry’s First Interim Report of July 2022. The amendments provide that such further interim payments should be made to the estates of deceased infected persons (i.e. personal representatives) as a pragmatic method of ensuring that family members of deceased infected persons get some compensation reasonably quickly.

8. The UK Government amendments provide for the following:

- establish a new arms-length body called the Infected Blood Compensation Authority (“IBCA”) to deliver the infected blood compensation scheme, to be funded by the UK Government;

¹ <https://www.infectedbloodinquiry.org.uk/sites/default/files/2023-04/Infected%20Blood%20Inquiry%20Second%20Interim%20Report.pdf>

- require the Secretary of State or the Minister for the Cabinet Office to lay regulations to establish the infected blood compensation scheme and set out details of who will be eligible for that scheme. Those eligible can include people infected via blood transfusions, via blood products (medicines made from human plasma) or via tissue transplants, along with people who were subsequently infected by those infected people (known as secondary infectees) and people who have been affected by those people being infected (such as their relatives);
- require the Secretary of State or the Minister for the Cabinet Office to set out in the scheme regulations how payment amounts are to be determined, including allowing for compensation payment levels to be set or to be capped at a specified amount;
- enable the Secretary of State or the Minister for the Cabinet Office to set out in the scheme regulations the procedure for making and deciding applications for payments;
- enable the Secretary of State or the Minister for the Cabinet Office to make provision for a review of decisions by the IBCA, but requires the Secretary of State to provide for appeals to the First Tier Tribunal;
- enable data sharing with the IBCA, for example by NHS National Services Scotland (“NSS”) as managers of SIBSS;
- place a ‘duty to cooperate’ with the IBCA on certain organisations, including the Scottish Ministers (Scottish Government) and NSS, as well as any other persons set out in Regulations made by the Secretary of State or the Minister for the Cabinet Office;
- enable the Secretary of State or the Minister for the Cabinet Office to make arrangements for the provision of support and assistance to applicants;
- require the Secretary of State or the Minister for the Cabinet Office to make arrangements for the payment of £100,000 to personal representatives of qualifying infected persons, the latter defined as a deceased person who was registered under an infected blood support scheme or with a relevant organisation. Payments are only to be made to representatives of deceased infected persons to or in respect of whom no interim compensation payments have already been made;
- require the Secretary of State to make arrangements for the procedure for making payments to personal representatives. Arrangements may include arrangements for one or more persons (which could include the Scottish Ministers) to administer the payments on behalf of the Secretary of State or the Minister for the Cabinet Office;
- make provision for information sharing for the purpose of any matter connected with the making of payments to personal representatives;
- set out details of the membership of the IBCA and how the Chair and other members will be appointed by the Secretary of State, as well as staffing arrangements. In addition, this requires the UK Government to provide funding to the IBCA both for the costs of the compensation

scheme and for its running costs. It also requires the IBCA to provide annual reports;

- allow the Secretary of State or the Minister for the Cabinet Office to make ‘transfer schemes’, which could enable the IBCA to take on some of the Scottish Government’s or NSS’ functions in relation to work of the existing infected blood support schemes, as well as their liabilities;
- enable the Treasury to make regulations about taxes affected by a transfer scheme;
- make consequential amendments to reflect the fact that the IBCA will take on the obligations of a public body under existing legislation;
- enable the Scottish Ministers to lay affirmative regulations in the Scottish Parliament to make consequential amendments as a result of the IBCA being a new public authority; and
- amend the extent clause of the Bill to extend these compensation provisions to the whole of the UK.

Reasons for recommending legislative consent

9. The Scottish Government is supportive of the policy intent of these amendments as they will enable the Infected Blood Inquiry’s recommendations to be implemented. What happened was a terrible tragedy and the Scottish Government has apologised to the victims and has taken a number of actions to increase financial support via the SIBSS for those infected with Hepatitis C and/or HIV and their widows, widowers, civil partners or long-term cohabiting partners.

10. The Scottish Government has already confirmed in its closing submissions to the Infected Blood Inquiry that it recognises the strong case for provision of compensation for those infected or affected as a result of infected NHS blood or blood products. The Scottish Government also recognises both that those infected and affected are frustrated that details of a compensation scheme have not yet been set out by the UK Government and that further interim payments have not yet been made and so want to see progress being made more quickly.

11. The Scottish Government also recognises the arguments made by the Infected Blood Inquiry that compensation should be provided by a single UK-wide scheme to ensure consistency of approach regardless of where in the UK an applicant lives or where in the UK they or their relative were infected. The Inquiry also noted a single scheme would allow for a scheme to be established more quickly and applications to be processed as efficiently as possible, but also to ensure the scheme has the appropriate legal and medical expertise. If a scheme were to be delivered in Scotland, separate primary legislation would be required to provide the powers to enable such a scheme to provide compensation.

12. The Scottish Government is pleased to see that the powers set out in these amendments to the Bill to enable the Secretary of State or the Minister for the Cabinet Office to make regulations in areas which directly impact on the Scottish

Government or NSS as manager of SIBSS, in relation to transfer schemes and the duty to cooperate, require the consent of Scottish Ministers before such regulations are laid. There is no such requirement in relation to the regulations to set up the UK-wide compensation scheme, as the UK Government will be responsible for setting up and funding the scheme. However, the Scottish Government will work closely with the UK Government on the details of the scheme.

13. Even though the amendments provide for how the IBCA is to be structured (and it will be for the UK Government to appoint the relevant members), the amendments include little detail on how the scheme will operate, leaving such details to be set out either in regulations or for the UK Government or the IBCA to decide. The scheme may have significant implications for delivery of ongoing future financial support in Scotland via the existing SIBSS, managed on behalf of Scottish Ministers by NSS.

14. The Scottish Government does not yet have details of the procedure by which further interim payments will be paid to personal representatives of qualifying infected persons as this will be set out in the arrangements to be made by the Secretary of State or Minister for the Cabinet Office. Paying money to estates in this way is not the route recommended by the Inquiry, which recommended that payments should be made directly to relatives, but given the operational challenges of delivering further interim payments to relatives the UK Government has concluded that payments to estates provide i) a more efficient/quicker solution through which compensation can be paid; and ii) respects the will of the deceased infected person where they left money to these family members/established intestacy rules. Utilising this method may thus ensure that family members of deceased infected get some compensation reasonably quickly. As in the case of the interim payments made to infected persons and bereaved partners in October 2022, the payments may be delivered in Scotland via NSS and SIBSS. NSS and SIBSS believe that making these payments would be deliverable within existing resources.

Consultation

15. There has been no formal consultation on this amendment. Part 3 is the result of a backbench amendment to the UK Bill and is now being amended by the UK Government to make more detailed provision and ensure that it is workable. However, the proposed amendment is based on the recommendations from the Infected Blood Inquiry in its Second Interim Report of April 2023². In developing this report, the Inquiry has considered evidence from a wide range of witnesses from across the UK.

Financial implications

16. The provision would require the UK Government to establish a compensation authority to deliver a compensation scheme and would require the UK Government

² <https://www.infectedbloodinquiry.org.uk/sites/default/files/2023-04/Infected%20Blood%20Inquiry%20Second%20Interim%20Report.pdf>

to pay for the costs of that scheme. There would therefore not be likely to be additional costs to the Scottish Government from the compensation scheme. Similarly, arrangements for interim compensation payments to personal representatives of qualifying infected persons are to be made by the Secretary of State or Minister for the Cabinet Office.

Other relevant considerations

17. Not applicable.

Post EU scrutiny

18. Not applicable. This LCM has been assessed as not relevant to the Scottish Government's alignment policy.

Conclusion

19. For the reasons set out in paragraphs 9 to 14 above, the Scottish Government is supportive of the amendments and recommends that the Scottish Parliament gives its consent to the following provisions:

- Part 3 and Schedule (Infected Blood Compensation Body)

And to the extent that they relate to Part 3 of the Bill:

- Clause 58 (power to make consequential provision)
- Clause 59 (regulations)
- Clause 60 (extent)
- Clause 61 (commencement)

20. The draft motion, which will be lodged by the Cabinet Secretary for NHS Recovery, Health and Social Care, is:

“That the Parliament agrees that the relevant amendments to the Victims and Prisoners Bill tabled on 17 April 2024, relating to an infected blood compensation body and further interim compensation payments, so far as these matters fall within the legislative competence of the Scottish Parliament or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
April 2024

This Legislative Consent Memorandum relates to the Victims and Prisoners Bill (UK legislation) and was lodged with the Scottish Parliament on 25 April 2024

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