

Health, Social Care and Sport Committee
Tuesday, 30 April 2024
13th Meeting, 2024 (Session 6)

Victims and Prisoners Bill Legislative Consent Memorandum - Note by the Clerk

Introduction

1. The UK Government first introduced the Victims and Prisoners Bill to the House of Commons on 29 March 2023. Second Reading took place on 15 May 2023 and Commons Committee Stage concluded on 11 July 2023.
2. A carryover motion was agreed by the House of Commons on 15 May 2023. The Bill was carried over to the next Parliamentary session and reintroduced on 8 November 2023. The [latest version of the Bill](#) is available on the UK Parliament website.
3. The UK Parliament will not normally legislate on matters devolved to the Scottish Parliament without its consent; this is often referred to as the Sewel Convention. [Chapter 9B of the Parliament's Standing Orders](#) sets out the rules and procedures for seeking legislative consent under the convention.
4. The Victims and Prisoners Bill did not trigger the need for an LCM under the convention when introduced. However, it now falls under Rule 9B.3.1(c) of Standing Orders, as amendments have been proposed at the Report Stage in the House of Lords to include "relevant provision".
5. For any views of the Parliament to be considered at Westminster, it must conclude its considerations before the last amending stage, which is normally taken to be Report Stage in the 2nd House. However, it is only at this stage that this Bill has become a "relevant Bill" in terms of the Rules. Therefore, it is not possible for the Scottish Parliament to conclude consideration before that stage. The final sitting at Report Stage, where the amendments are expected to be considered, is scheduled for 30 April 2024.
6. The Scottish Government supports the Bill making provision on devolved matters for Scotland and recommends that the Parliament gives its consent. The LCM therefore contains a draft motion.

Today's session

7. Ahead of today's evidence session, the Committee requested written submissions on the UK Government amendments from Haemophilia Scotland, the Scottish Infected Blood Forum and the Scottish Infected Blood Support Scheme Advisory Group. Submissions were received from Haemophilia Scotland and the Scottish Infected Blood Forum and are available at **Annexe A** and discussed in more detail below.
8. Jenni Minto, Minister for Public Health and Women's Health, and Scottish Government officials will give evidence on the LCM at today's meeting.

Victims and Prisoners Bill

9. Part 3 of the Bill requires the Secretary of State to establish a body to administer a compensation scheme to victims of the infected blood scandal, within three months of passing the Act.
10. The [explanatory notes](#) state that “for the purposes of the Act, a victim of the infected blood scandal is defined with reference to the Infected Blood Inquiry’s [Second Interim Report](#), as laid in Parliament on 19 April 2023, which made recommendations as to who should be eligible for admittance to such a scheme”.
11. The [Infected Blood Inquiry](#), an independent public statutory Inquiry, was established to examine the circumstances in which men, women and children treated by national Health Services in the United Kingdom were given infected blood and infected blood products. The Inquiry’s final report is expected to be published on 20 May 2024.

Legislative Consent Process

12. The Scottish Government is required to prepare a Legislative Consent Memorandum (LCM) in relation to any Bill in the UK Parliament that would:
 - change the law on a “devolved matter” (an area of policy which the UK Parliament has devolved to the Scottish Parliament); or
 - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
13. If the Scottish Government recommends in its LCM that consent be given, it will then lodge a motion to be taken in the Chamber, known as a legislative consent motion. (It is also possible for other MSPs to lodge such a motion, but only if they have first lodged their own LCM.) .
14. In this case, the Scottish Government has indicated it intends to lodge the following legislative consent motion:

“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 Legislative Consent Memorandum

15. A [legislative consent memorandum](#) was lodged by by Neil Gray MSP, Cabinet Secretary for NHS Recovery, Health and Social Care, on 25 April 2024.
16. The LCM notes that the majority of the Bill’s provisions do not extend to Scotland (and those that do have, until now, related to reserved matters). However, it goes on to state that, on 17 April 2024, the UK Government lodged amendments

to replace the previous Part 3 provision that was included in the Bill in the House of Commons. This followed an amendment lodged by Dame Diana Johnson MP relating to compensation for victims of the infected blood scandal. It further notes that, if the UK Government amendments pass, the following provisions will extend to Scotland and be within the legislative 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)

17. The LCM notes that the UK Government amendments will 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;
- 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 Scottish Infected Blood Support Scheme 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".

18. The LCM sets out the Scottish Government's support for the policy intent of these amendments, in that they are based on the recommendations from the Infected Blood Inquiry's Second Interim Report and "will enable the Infected Blood Inquiry's recommendations to be implemented". The LCM further states that it "recommends that the Scottish Parliament gives its consent" to the provisions noted above.

19. It goes on to state that, while the UK Government amendments set out how the IBCA will be structured, they provide little detail on how the scheme will operate. The LCM notes that the “Scottish Government will work closely with the UK Government on the details of the scheme”. The LCM also notes that “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”.
20. The LCM further states that 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.” The LCM acknowledges that this was not the route recommended by the Inquiry, but that this “method may thus ensure that family members of deceased infected get some compensation reasonably quickly.” It goes on to note that the payments may be delivered in Scotland via NSS and SIBSS and that both are of the view that making these payments would be deliverable within existing resources.

Submissions from stakeholders

21. Responses from stakeholders express – on balance – support for the LCM but highlight that the proposals deviate from the recommendations of Sir Robert Francis who published the [Infected Blood Compensation Study](#).
22. Haemophilia Scotland details some of the areas of deviation in its submission. These include:
- Removal of the requirement for the Chair of the Infected Blood Compensation Authority (IBCA) to be chaired by a Judge of the High Court or Court of Session.
 - Appeal hearings would no longer have the option to be in person and would be to the new body rather than an independent appeal body. The amendments would also appear to remove independent legal representation and support during an appeal.
 - No provision for the representation of members of the community on the IBCA.
23. Other areas raised in the responses include:
- That the IBCA should be accountable to Parliament and not a Minister or Department
 - There should be a clear, tight, and agreed timetable to get to the point of operational delivery of the scheme. The amendments remove a 3-month timescale
 - A lack of detail on amendments relating to compensation payments. Specifically, the circumstances in which payments would be held in trust and the possibility for repayments
 - The Chair should be responsible for all governance, management, structural, operational and organisational development.
 - The existing support scheme in Scotland (SIBSS) should be kept separate from the compensation scheme and guaranteed for life

- Support payments and compensation payments should be ‘segregated legislatively’
 - Hepatitis B victims should be included in the interim compensation arrangements
 - Those infected and affected by contaminated blood should be involved in the establishment of IBCA and have input and a power of veto in relation to key appointments
24. The responses from stakeholders also raise concern about the membership of an expert group that has been established to advise the Government on some of the legal and technical aspects of delivering compensation.
25. Sir Jonathan Montgomery has been appointed as the chair of the group but the responses have concerns that he has previous links to Bayer Pharmaceuticals and the NHS. They are also concerned that the other members of the group are anonymous. [The Paymaster General for the UK Government](#) confirmed that their identities have not been disclosed in order to ‘safeguard the privacy and ability of experts to continue their frontline clinical roles whilst advising on Government policy’. Please note, however, that this is not a matter covered by the legislation and, as such, is not included in the LCM.
26. Members may wish to cover the following areas with the Minister:

- **Can the Minister provide more information on the deviation from the recommendations of Sir Robert Francis’ report and expand on the rationale for this?**
- **Does the Minister support the calls made by stakeholders in their submissions?**
- **If the legislative consent is given, will the Scottish Government be involved in the development of the regulations and commit to ensuring the wishes of Scottish stakeholders are incorporated into those regulations?**
- **Does the Minister share stakeholder concerns about the appointment of Sir Jonathan Montgomery and the lack of transparency over the expert group membership?**

Delegated Powers and Law Reform (DPLR) Committee scrutiny

27. Due to time constraints in the passage of the Bill at Westminster and subsequent lodging of the LCM at a late stage, the Delegated Powers and Law Reform (DPLR) Committee will also consider the LCM at its meeting on 30 April 2024. It will therefore not be possible to include the conclusion of the DPLR Committee’s considerations in this session.

Decision

28. **The Committee is invited to decide, at the conclusion of today's public item, whether it supports the Scottish Government position (i.e. to recommend that the Parliament give legislative consent to the Bill).**

Next steps

29. **As the legislative consent motion will be taken in the Chamber in the afternoon of 30 April 2024, the Committee will publish its report immediately after today's meeting.**

**Clerks to the Committee
April 2024**

Annexe A

Submission from Haemophilia Scotland, received 23 April 2024

Thank you for your letter dated 18th April 2024 inviting our organisation to express its views on the recently published amendments from the UK Government to the Victims and Prisoners Bill.

We regret the short notice to respond in this matter, as our comments and recommendations are provided prior to the House of Lords sitting to debate the new amendments in the current Report Stage. Additionally, these views are expressed before our scheduled meeting with the Minister for the Cabinet Office, which is set for the 10th of May.

We have serious concerns over some of the proposed changes which deviate from the recommendations set out by Sir Robert Francis in his Compensation Framework Study and later refined by Inquiry Chair Sir Brian Langstaff in his Second Interim Report.

However, we need to get this legislation into place so that swifter progress can be made to establish a compensation scheme for infected and affected individuals. Several of these matters might be addressed through further amendments in either the House of Lords on the same day the Committee meets or otherwise.

On balance, therefore, we recommend the Scottish Parliament passes the Legislative Consent Motion (LCM) for the relevant sections of the V&P Bill including the proposed UK Government amendments.

There is however another related matter that we seek the Scottish Parliament's support for. The anonymous make-up of the UK Government's Infected Blood Inquiry Response Expert Group to determine the framework and tariffs for the new compensation scheme is deeply troubling. Without knowledge of the names, size and composition of this Expert Group, apart from Chair Professor Sir Jonathan Montgomery, we are uncertain about the level of specialism and experience the group possesses in this field, and specifically any expertise in Scots Law.

It is a critical body that will be the platform and structural base of the system for setting the levels and making compensation payments to those infected and affected.

This appears to be contrary to the Nolan principles for public life and we know of no such similar precedent set by the Scottish Parliament or Scottish Government. We urge the Parliament to raise this with the Scottish Government and support them in challenging the UK Government to remove the shroud of secrecy on this vital matter.

Should the Committee wish, I would be happy to offer oral evidence on the 30th of April in support of the above. However, given my own medical condition, I would prefer to do so by video link if needed.

Follow-up submission from Haemophilia Scotland, received 25 April 2024

Addendum to Victims and Prisoners Bill Legislative Consent Memorandum Letter

In addition to our letter dated 23rd April 2024 wherein we expressed our views on the UK Government's amendments to the Victims and Prisoners Bill, this addendum aims to provide more detail on our concerns regarding the deviations to the recommendations initially proposed by the Infected Blood Inquiry in its Second Interim Report.

The concerns outlined below are not prioritized in terms of severity. Since the publication of the amendments, Haemophilia Scotland has been actively advocating along with other organisations involved in the contaminated blood scandal for additional amendments to be tabled. These amendments would seek to address and mitigate the highlighted concerns.

1. Removal of three-month timescale to establish the Compensation Arm's Length Body.

The new Government amendments would remove the timescales included in Clause 40 (1) of the Victims and Prisoners Bill of a commitment to set up the new body promptly once the Act was passed. There is a need for greater transparency and a clearer indication of timescales from the UK Government after so many months of uncertainty that compensation would ever be paid. Removing this deadline would only compound this and allow the potential for further delays.

2. Removal of recommendation for the new body to be Chaired by a Judge of the High Court or Court of Session.

The elimination of the proposal outlined in Inquiry Recommendation 14 is deeply concerning. Its intent was to ensure the appointment of an independent chair possessing the necessary expertise and judgment to lead a compensation scheme of this size and nature. We fail to see any justification for deviating from these criteria for such a pivotal role.

3. Proposed Changes to Hearings and Support to Applicants.

New amendment OPC300 suggests that the right of appeal would differ from the format suggested by Inquiry Recommendation 14 with the implication that hearings would no longer have the option to be in person. This would remove the ability for an applicant to stand before a panel and justify their position clearly and more effectively than the alternatives, should they wish to do so. Additionally, amendment OPC349 suggests the removal of independent legal representation and support for applicants who wish to appeal a decision. Appeals would also be to the new compensation body itself and not to a bespoke independent appeal body as the Inquiry recommended. This is understandably troubling if the entire appeal process is contained within the new body and any support is also provided from the same source.

4. Compensation Payments.

Amendment OPC298 addresses the payments to be paid by the Infected Blood Compensation Scheme. While several details relate to regulations yet to be established, two areas of concern are notable: the mention of payments

being held in trust and the possibility of repayments to the IBCA under specified circumstances. The absence of further details regarding the circumstances these would come into effect is cause for alarm. There is great concern that existing support scheme payments through the Scottish Infected Blood Support Scheme or any previous disbursements could be jeopardised by these forthcoming regulations.

5. Community and National Involvement in Infected Blood Compensation Body (IBCA).

There is no provision for representation in the IBCA Membership from the community itself or from the devolved nations. This is once again in contrast to Inquiry Recommendation 14 b) which recommends the inclusion of eligible persons and their representatives within an advisory board to assist in the review and improvement of the scheme. Representation from the community is vital to ensure accountability and trust of the newly established scheme.

I hope that the information provided above is beneficial to the Committee. We are of course happy to provide any further assistance as needed.

Submission from the Scottish Infected Blood Forum, received 24 April 2024

Victims and Prisoners Bill Legislative Consent Memorandum

Thank you for your letter dated 18th April 2024 inviting our charity to express its views on the recently published amendments from the UK Government to the Victims and Prisoners Bill in anticipation of the legislative consent memorandum (LCM) being lodged and referred to your Committee.

We, like others, have very serious concerns over some of the proposed changes which deviate from the recommendations set out by Sir Robert Francis in his Compensation Framework Study and subsequently refined by the Infected Blood Inquiry Chair Sir Brian Langstaff in his Second Interim Report.

In our opinion the recommendations in Sir Brian's report should be accepted in full. Legislatively there should be no fundamental deviations from those recommendations under the pretext or guise of technical, practical, timeframe or other "operationalisation" reasons.

We are very conscious of the balance between getting legislation into place so that swifter progress can be made to establish a compensation scheme for infected and affected individuals, and moving 'at pace' and then getting it wrong with little possibility of retrospective changes being enacted once views and actions have been solidified.

We are also conscious that several of these matters might be addressed through further amendments in either the House of Lords on the same day the Committee meets or otherwise. But there is no guarantee that this will happen. Indeed, there should not be a presumption that this will happen given the UK Government's track record of delay, obfuscation and prevarication.

However, and for the avoidance of doubt, our views extend to the following areas:

- a) **Accountability:** To truly be an arms-length body, the Infected Blood Compensation Authority (“IBCA” or “the scheme”) must be accountable to Parliament, not a Minister or Department.
- b) **Chair:** A High Court judge (or equivalent) must be appointed as the Chair of the IBCA.
- c) **Support schemes:** The four nations’ financial support schemes must be kept separate from IBCA, retaining all their respective devolution features (e.g. self-declaration/assessment in the Scottish scheme) and must be guaranteed “for life”.
- d) **Conflation:** following on from above, support payments must not be conflated with compensation payments and must be explicitly segregated legislatively in the proposed bill.
- e) **Participation:** Infected and affected people must be immediately involved in all stages of establishing the new compensation body.
- f) **Hepatitis B:** chronic HBV victims must be immediately included for interim compensation.
- g) **Responsibility:** All governance, management, structural, operational, organisational development is to be led by the Chair, who must not be hamstrung by pre-set arrangements put in place by Government.
- h) **Timelines:** There must be a clear, tight, and agreed timetable to get to the point of operational delivery of the scheme.
- i) **Appointments:** The infected and affected community must have an input and veto option on key appointments to IBCA.
- j) **Transparency:** There must be full disclosure of the Government’s responses to and deliberations concerning the Sir Robert Francis KC compensation framework study and the Inquiry’s second interim report covering the periods from their publication.

Additionally, there is another related matter that we seek the Scottish Parliament’s support for. The anonymous make-up of the UK Government’s Expert Group whose decisions will be critical to the foundation of the system for framework and tariffs for the new compensation scheme. The lack of transparency on this is profoundly concerning. Indeed there are calls within the Forum membership for the group to be disbanded. Specifically, with respect to Professor Sir Jonathan Montgomery, his CV includes working for Bayer Pharmaceuticals and Chairing the Oxford NHS Trust, both of which are significantly implicated as culpable in the evidence presented to the Infected Blood Inquiry. This appointment in particular is seen as fundamentally wrong in the eyes of the infected and affected.

Without knowledge of the membership of the Expert Group, apart from Chair Professor Sir Jonathan Montgomery, we are uncertain about the level of specialism and experience the group possesses in this field, including any expertise in Scots Law. From recent meetings with Scottish Government Officials, we know that

Scottish Government have still to be advised of the Scottish firm of solicitors assisting the Expert Group on matters relating to Scots Law.

Furthermore, we have serious concerns about the outputs and outcomes arising from this group and its work being at odds with, or watering down, the recommendations of the UK Government's own advisor Sir Robert Francis, and the Government's own independent Inquiry.

We urge the Committee to raise these points with the Scottish Government and support them in challenging the UK Government to remove the shroud of secrecy on this vital matter and question the validity of this group which we consider to be unnecessary and unwelcome.

We finally urge the Health Committee to look at all the specific issues and inclusions outlined above to aid the Scottish Parliament in passing the Legislative Consent Motion (LCM) for the relevant sections of the V&P Bill while opposing those which are not in the best interests of Scottish citizens or devolution.