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Dear Stuart,

Thank you for your letter dated 10 November, about the Northern Ireland Troubles (Legacy and Reconciliation) Bill.

The UK Government is clear that the people of Northern Ireland have waited too long to see the implementation of effective legacy mechanisms and is determined to deliver better outcomes for those most impacted by the Troubles while helping society to look forward. This legislation will provide the best opportunity for information recovery, so that families and all those impacted, irrespective of where in the UK they live, can know what happened to their loved ones, and wider reconciliation, so that society in Northern Ireland can move forward.

It is for these reasons that the UK Government believes that the powers in this Bill are both necessary and proportionate. Powers for the UK Government to make statutory instruments (SIs) in devolved areas are not new and have been used across a wide range of policy areas since the advent of devolution.

This is because it is often appropriate for the UK Government to amend existing or introduce new UK-wide regulations, including in devolved areas. In this instance, to ensure coherence across the UK for all those citizens impacted by the Troubles irrespective of where they reside.

In response to the Committee's request for an explanation in relation to each of the regulation-making powers below:

Clause 52(2)

It is standard for legislation to be amended in order to allow for consequential changes in circumstance, for example in this case in the way that the ICRIR carries out its functions. Should minor legislative change be required to remove obstacles and facilitate the new processes it is most appropriate for these to be done in secondary legislation. Some amendments to primary legislation have been made on the face of the bill and the Government will endeavour to identify further necessary consequential amendments to primary legislation, but it is possible that some may not be identified until later, and it will be necessary to make consequential amendments to secondary legislation. Under this section, a "national authority" includes Scottish Ministers and may by regulations make provision that is consequential on this Act. This is also true for Clause 57(4).

Clause 57(4)

This power to select variable commencement dates is necessitated by the variety of provisions within the Bill, including the creation of a new statutory body.

Clause 30(1)

The power to make provision in respect of the holding of information by the ICRIR deals with matters of detail, which are more appropriate to secondary legislation. In relation to existing bodies, such provision would normally be made using Memoranda of Understanding or service level agreements. However, it is considered appropriate for the purpose of transparency - and given the sensitivity of the issues involved - to include such provisions in secondary legislation to inform the subsequent development of memoranda or agreements. As Government standards on the protection of information develop, this secondary legislation can be amended with the appropriate levels of scrutiny and speed required to reflect those standards.

Clause 31(1)

This power is essential in ensuring the ICRIR is able to retain and access the biometric data it needs to assess in order to conduct Article 2 (ECHR) compliant investigations into Troubles-related incidents. Its use will be proportionate, for the purposes of retaining this data only, and it will not be able to be used for any other purposes.

The biometric records from which a collection can be designated have been collected under a number of different statutory powers and are held in a number of different databases and collections, with varying levels of identifying information available and varying ease of access to information.

It is considered appropriate for the destruction of such material to be set out in secondary legislation because a very large amount of material is currently retained. Sufficient time needs to be allowed for the exercise of identifying and retaining or destroying this material in appropriate cases, and doing this in primary legislation would be inefficient and unnecessary given the specific nature of the retention criteria that will need to be outlined.

The regulation - making power will allow the Secretary of State to retain the biometrics required by ICRIR in connection with its investigations, instead of the alternative of seeking a delay to the implementation of the retention regime in Northern Ireland (expected through the commencement of Criminal Justice Act 2013 in 2023/24).

Clause 33(3)

It is important to be clear the operation of the ICRIR will be time bound and not continue indefinitely, which is a critical consideration given the Government's commitment to a way forward on legacy which will be more efficient and provide more timely answers for victims and their families.

In the interests of achieving the overriding policy objective in establishing this organisation as well as permitting it to be responsive to its future (currently unknown) caseload, it is proposed that prescribing the date of winding up should be delegated to secondary legislation to allow that decision to be made in full cognisance of the circumstances and the views of relevant stakeholders at the time.

Conclusion

My officials regularly engage with their Scottish Government counterparts and will continue to engage constructively with the Scottish Government and the other Devolved Governments.

Yours sincerely,

**THE RT HON CHRIS HEATON-HARRIS MP
SECRETARY OF STATE FOR NORTHERN IRELAND**