

Northern Ireland Troubles (Legacy and Reconciliation) Bill

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON THIRD READING

[Amendments marked ★ are new or have been altered]

Amendment
No.

Clause 42

LORD CAINE

1 Page 36, line 4, at end insert—

“(8A) This section does not apply to a relevant Troubles-related civil action if, or to the extent that, section (*Interim custody orders: prohibition of proceedings and compensation*)(1) applies to the action (prohibition of civil claims alleging invalidity of interim custody orders).”

Member’s explanatory statement

This provides that Clause 42 does not apply to proceedings to which subsection (1) of Clause (Interim custody orders: prohibition of proceedings and compensation) applies.

After Clause 44

LORD CAINE

2 Insert the following new Clause—

“Interim custody orders: validity

(1) This section applies in relation to the functions conferred by—

- (a) Article 4(1) of the 1972 Order, and
- (b) paragraph 11(1) of Schedule 1 to the 1973 Act,

(which enabled interim custody orders to be made, and which are referred to in this section as the “order-making functions”).

- (2) The order-making functions are to be treated as having always been exercisable by authorised Ministers of the Crown (as well as by the Secretary of State).
- (3) An interim custody order is not to be regarded as having ever been unlawful just because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.

After Clause 44 - continued

- (4) The detention of a person under the authority of an interim custody order is not to be regarded as having ever been unlawful just because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (5) Subsections (3) and (4) do not limit the effect of subsection (2).
- (6) This section and section (*Interim custody orders: prohibition of proceedings and compensation*) apply only in relation to an exercise of any of the order-making functions which was conduct forming part of the Troubles (see, in particular, section 1(2)); and for this purpose any exercise of any of the order-making functions must be assumed to have been conduct forming part of the Troubles unless the contrary is shown.
- (7) In this section and section (*Interim custody orders: prohibition of proceedings and compensation*) –
- “1972 Order” means the Detention of Terrorists (Northern Ireland) Order 1972 (S.I. 1972/1632 (N.I. 15));
- “1973 Act” means the Northern Ireland (Emergency Provisions) Act 1973;
- “authorised Minister of the Crown” means a Minister of the Crown authorised to sign interim custody orders –
- (a) by Article 4(2) of the 1972 Order (in the case of such orders under that Article), or
- (b) by paragraph 11(2) of Schedule 1 to the 1973 Act (in the case of such orders under that paragraph);
- “interim custody order” means an interim custody order under –
- (a) Article 4 of the 1972 Order, or
- (b) paragraph 11 of Schedule 1 to the 1973 Act;
- “order-making functions” has the meaning given in subsection (1).”

Member’s explanatory statement

This provides for Article 4 of the Detention of Terrorists (Northern Ireland) Order 1972 and the corresponding provision in the Northern Ireland (Emergency Provisions) Act 1973 to be read as having allowed junior Ministers to make interim custody orders (which was understood to be their effect at the time when the powers were in force).

3

Insert the following new Clause –

“Interim custody orders: prohibition of proceedings and compensation

- (1) On or after the commencement day, a civil action may not be continued or brought if, or to the extent that, the claim that is to be determined in the action involves an allegation that –
- (a) the person bringing the action, or another person, was detained under the authority of an interim custody order, and
- (b) that interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.

After Clause 44 - continued

- (2) On or after the commencement day, criminal proceedings relating to the quashing of a conviction may not be continued or brought if, or to the extent that, the grounds for seeking to have the conviction quashed involve an allegation that—
 - (a) the person bringing the proceedings, or another person, was detained under the authority of an interim custody order, and
 - (b) that interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions in relation to the order.
- (3) If criminal proceedings relating to the quashing of a conviction are pre-commencement proceedings—
 - (a) subsection (2) does not apply to the criminal proceedings;
 - (b) section (*Interim custody orders: validity*) does not prevent the court from quashing the conviction on the ground that an interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions.
- (4) On or after the commencement day, no compensation for a miscarriage of justice is to be paid in respect of a conviction that has been reversed solely on the ground that an interim custody order was unlawful because an authorised Minister of the Crown exercised any of the order-making functions.
- (5) Regulations under section 55(2) which make provision that is consequential on section (*Interim custody orders: validity*) or this section—
 - (a) may amend this Act (including this section);
 - (b) (whether or not they make such amendments) are subject to made affirmative procedure, unless they are instead made in accordance with section 55(5) (the affirmative procedure) or 55(6) (the negative procedure).
- (6) In this section—

“commencement day” means the day on which this section comes into force;

“compensation for a miscarriage of justice” means compensation under section 133 of the Criminal Justice Act 1988;

“pre-commencement proceedings” means proceedings—
 - (a) for which leave was given before the commencement day, or
 - (b) which follow from a referral made by the Criminal Cases Review Commission before the commencement day.”

Member’s explanatory statement

This prohibits civil and criminal proceedings and payment of compensation for miscarriages of justice which are based on interim custody orders made by junior Ministers having been unlawful.

Clause 56

LORD CAINE

4 Page 48, line 16, at end insert –

- “(4A) Where regulations under this Act are subject to made affirmative procedure, the statutory instrument containing them must be laid before Parliament after being made.
- (4B) Regulations contained in a statutory instrument laid before Parliament under subsection (4A) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (4C) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which –
- (a) Parliament is dissolved or prorogued, or
 - (b) either House of Parliament is adjourned for more than four days.
- (4D) If regulations cease to have effect as a result of subsection (4B), that does not –
- (a) affect the validity of anything previously done under the regulations, or
 - (b) prevent the making of new regulations.”

Member’s explanatory statement

This sets out the made affirmative procedure for Parliamentary scrutiny of regulations under Clause 55 which make provision in consequence of Clause (Interim custody orders: validity) or (Interim custody orders: prohibition of proceedings and compensation).

Clause 59

LORD CAINE

5 Page 53, line 25, at end insert –

- “(3A) Sections *(Interim custody orders: validity)* and *(Interim custody orders: prohibition of proceedings and compensation)* extend to Northern Ireland only.”

Member’s explanatory statement

This provides for the two new Clauses in Lord Caine’s name to extend only to Northern Ireland (like the 1972 Order and 1973 Act, to which the new Clauses relate).

Clause 60

LORD CAINE

6 Page 53, line 31, at end insert –

- “(aa) section *(Interim custody orders: prohibition of proceedings and compensation)* (5);”

Member’s explanatory statement

This provides for subsection (5) of Clause (Interim custody orders: prohibition of proceedings and compensation) to come into force on royal assent (as it relates to the power to make consequential provision which comes into force then).

- 7 Page 53, line 35, after “42” insert “, (Interim custody orders: validity) and (Interim custody orders: prohibition of proceedings and compensation)(except for subsection (5))”

Member’s explanatory statement

This provides for the two new Clauses in Lord Caine’s name to come into force two months after royal assent (except for subsection (5) of Clause (Interim custody orders: prohibition of proceedings and compensation) which is dealt with by the amendment of Clause 60(1) in Lord Caine’s name).

- 8 Page 54, line 1, after “42” insert “, (Interim custody orders: validity) and (Interim custody orders: prohibition of proceedings and compensation)”

Member’s explanatory statement

This is consequential on the other amendments of Clause 60 in Lord Caine’s name.

In the Title

LORD CAINE

- 9 Line 6, at end insert “, and to provide for the validity of interim custody orders.”

Member’s explanatory statement

This is consequential on Clauses (Interim custody orders: validity) and (Interim custody orders: prohibition of proceedings and compensation).

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3 July 2023
