

# COMMONWEALTH PARLIAMENTARY ASSOCIATION AND INTERNATIONAL COMMITTEE OF THE RED CROSS (STATUS) BILL

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Commonwealth Parliamentary Association and International Committee of the Red Cross (Status) Bill as brought from the House of Commons on 29 April 2024 (HL Bill 68).

- These Explanatory Notes have been prepared by the Foreign, Commonwealth and Development Office (“FCDO”), with the consent of Baroness D’Souza, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might be best read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 This Bill seeks to enable the Government to treat the CPA and the ICRC in a manner comparable to that of an international organisation of which the United Kingdom, or His Majesty's Government in the United Kingdom, is a member. Before this Bill, the Government was unable to do that, including conferring privileges and immunities on these two organisations, because neither organisation falls within the scope of existing powers under the International Organisations Act 1968 (c. 48) ("the 1968 Act").
- 2 The Bill contains six clauses and one schedule, addressing issues related to the status of the CPA and the ICRC.
- 3 The Bill creates the power, by Order in Council, to (i) confer the legal capacities of a body corporate on the CPA and the ICRC, (ii) grant the organisation, its information and premises and its staff certain privileges and immunities commensurate with its functional needs, (iii) provide that references to international organisations in general legislation include references to the CPA and the ICRC, and (iv) allow for certain confidential information that the ICRC shares with the UK government to be exempted from legal disclosure requirements.
- 4 It is proposed that the Government will conclude written arrangements with the ICRC and CPA which will set out the parameters of the status change. They will include the privileges and immunities which the Government has decided to confer on the organisations, and which will be implemented using the powers in the Bill.

## Policy background

- 5 The Government's policy objective is to treat the CPA and ICRC in a comparable manner to international organisations of which the United Kingdom, or His Majesty's Government in the United Kingdom, is a member. Such treatment usually entails the conferring of the legal capacities of a body corporate, as well as specific privileges and immunities (P&I) relating to the organisation, its property and information, and its personnel. As the CPA and ICRC would not otherwise be considered as international organisations – given that they are not inter-governmental, there also needs to be provision applying to them relevant legislation which applies in respect of international organisations in general.
- 6 The CPA is an unincorporated association established by Parliamentarians and is composed of branches within national and sub-national legislatures across the Commonwealth. Its purpose is: "to promote knowledge of the constitutional, legislative, economic, social and cultural aspects of parliamentary democracy, with particular reference to the countries of the Commonwealth" (CPA Mission Statement).<sup>1</sup> The CPA is currently headquartered in the Parliamentary estate and draws its staff from across the Commonwealth, working closely with its over 180 CPA branches in nine geographic regions. The FCDO greatly values its long-standing programme partnership with the CPA and is currently working on projects to support Parliaments to adopt and implement updated Commonwealth benchmarks for democratic legislatures, with a focus on Parliaments in Africa and the Pacific. Treatment as an international organisation will facilitate the CPA to continue to operate fully across the Commonwealth and international fora. In particular, this will allow the organisation to

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<sup>1</sup> <https://www.cpahq.org/about-us/>

participate fully in areas where they are currently restricted, including signing up to international statements and communiqués.

- 7 The ICRC is “an impartial, neutral and independent organisation whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance” (ICRC Mandate).<sup>2</sup> The organisation has unique legitimacy to engage all parties to conflicts and has unparalleled access to vulnerable groups in conflict situations, operating in dangerous and challenging situations across the world, and interacting with both State and non-State actors, where its independence and maintenance of confidentiality is essential to maintaining trust and its operational effectiveness. The ICRC is frequently the only agency operating at scale in many conflicts. Its specialised role engaging with all arms-bearers, including the growing number of Non-State Armed Groups, is coupled with its direct delivery of a comprehensive range of integrated humanitarian assistance and protection programmes. It is thus an essential partner for achieving FCDO’s global humanitarian objectives, as well as reinforcing the UK’s ambition to be at the heart of an unrivalled global network for economic, diplomatic and security partnerships through supporting the ICRC’s promotion and implementation of International Humanitarian Law.
- 8 The ICRC’s unique international humanitarian mandate and mission has been formally recognised by States in the Geneva Conventions and their Additional Protocols and it has been accorded a status or treatment equivalent to that of an international organisation with relevant personality and P&I to date, over 110 States have now accorded it relevant privileges and immunities, including all other permanent members of the United Nations Security Council. The conferral of relevant privileges and immunities therefore to the ICRC is critical to enable it to operate in the UK in accordance with its international mandate, maintaining its strict adherence to the principles of neutrality, impartiality and independence and its working method of confidentiality.
- 9 The Government’s policy objective is a matter of international relations and the United Kingdom’s foreign and development policy, which includes the conduct of relations with international organisations. As recognised in the 2013 Memorandum of Understanding between the United Kingdom Government, the Scottish Ministers, the Welsh Ministers and the Northern Ireland Executive Committee, and re-affirmed in the review of Intergovernmental Relations (2022), the FCDO “will continue to be responsible for policy on diplomatic and consular relations with other countries and on all matters concerning international organisations represented in the UK” (paragraph D4.23)<sup>3</sup> and “international engagement and agreements...will be led directly by FCDO, either on a bilateral or multilateral basis where necessary”.<sup>4</sup>
- 10 The ICRC’s unique international humanitarian mandate means that it engages with conflict parties on International Humanitarian Law, working with prisoners, detainees and hostages in conflict zones. The ICRC maintains a long-standing and widely accepted working method of confidentiality. This means that the ICRC engages primarily in confidential and bilateral dialogues with States and others, and it expects States to respect the confidentiality of the

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<sup>2</sup><https://www.icrc.org/en/mandate-and-mission#%3A~%3Atext%3DThe%20ICRC%20is%20an%20independent%2C%20neutral%20organization%20ensuring%20humanitarian%20law%20and%20its%20implementation%20in%20national%20law>

<sup>3</sup>[https://assets.publishing.service.gov.uk/media/5a7e2e6ce5274a2e87db0159/MoU\\_between\\_the\\_UK\\_and\\_the\\_Developed\\_Administrations.pdf](https://assets.publishing.service.gov.uk/media/5a7e2e6ce5274a2e87db0159/MoU_between_the_UK_and_the_Developed_Administrations.pdf)

<sup>4</sup>[https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The\\_Review\\_of\\_Intergovernmental\\_Relations.pdf](https://assets.publishing.service.gov.uk/media/61df0068e90e07037ba76b4c/The_Review_of_Intergovernmental_Relations.pdf)

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information that is shared with them, including by ensuring that the content of that dialogue is not disclosed to any third parties nor used in any legal proceedings. If this information were made public through court or other processes, it would damage ICRC's ability to have confidential dialogue with conflict parties, their humanitarian access, and could pose security risks to their employees.

- 11 The Bill contains an enabling power which allows for certain confidential information that the ICRC shares with the UK government to be exempted from legal disclosure requirements. Without such a provision, the ICRC is likely to restrict the information it shares with the UK due to the risks posed by disclosure. This includes information which provides important analysis and intelligence related to UK Government priorities. The enabling power does not provide an absolute or blanket exemption from disclosure requirements for all ICRC communications. Important limitations have been incorporated, for example the exclusion of criminal case.
- 12 There was previously no law granting privileges and immunities to CPA or ICRC in the UK, or otherwise enabling them to be treated in a comparable manner to international organisations. The Government would usually accord privileges, immunities and other facilities in respect of international organisations by Order in Council using delegated powers under the 1968 Act or the International Development Act 2002 (c. 1) ("the 2002 Act"). Where these powers in the 1968 Act or 2002 Act are not sufficient, it is necessary to use primary legislation to accord the relevant facilities.
- 13 The Bill is being introduced as the powers in the 1968 Act and 2002 Act, and in particular the powers at section 1 of the 1968 Act, are not available in respect of the CPA or the ICRC. This is because neither organisation is an inter-governmental organisation, but instead has its own unique constitutional arrangements reflecting its specific international mandate. Therefore, it is necessary to establish bespoke enabling powers which will allow – once the necessary statutory instruments have been made to implement the arrangements - both the CPA and ICRC to operate in the UK in a manner comparable to an international organisation, with associated privileges and immunities.
- 14 The Bill will provide the necessary delegated legislation making powers so that the Government can provide for the CPA and ICRC to be treated in a manner comparable to an international organisation of which the United Kingdom, or His Majesty's Government in the United Kingdom, is a member. The exact treatment, including privileges and immunities, will be determined by the Government in accordance with the functional needs of both organisations and will be detailed in separate written arrangements.

## Legal background

- 15 The Government would usually accord privileges, immunities and other facilities in respect of international organisations by Order in Council using delegated powers under the 1968 Act or the 2002 Act. Where these powers in the 1968 Act or 2002 Act are not sufficient, it is necessary to use primary legislation to accord the relevant facilities.

## Previous legislative attempts

- 16 In March 2023 Rt Hon Dame Maria Miller MP, chair of CPA-UK, sponsored a Presentation Bill – the Commonwealth Parliamentary Association (Status) Bill – whose long title was “*A Bill to provide for corporate status of and for certain privileges and immunities to be accorded to the international inter-parliamentary organisation of national and sub-national legislatures of Commonwealth countries known as the Commonwealth Parliamentary Association and to its Secretary-General; and for connected purposes*”. It was withdrawn on 21 March 2023 before second reading.
- 17 On 5 July 2023 Rt Hon Dame Maria Miller MP introduced a second Presentation Bill the Commonwealth Parliamentary Association (Status) (No. 2) Bill – with the same long title. The Bill did not undergo second reading.
- 18 The FCDO is not aware of any recent attempts to legislate in respect of the ICRC.

## Territorial extent and application

- 19 The territorial extent of this instrument is set out in clause 6 of the Bill, that is the jurisdictions in which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 20 The provision in the Bill extends and applies to the whole of the United Kingdom.
- 21 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding Legislative Consent Motions.
- 22 The legislation does not extend to the Channel Islands, the Isle of Man or the British Overseas Territories.

# Commentary on provisions of the Bill

## Clause 1: The Commonwealth Parliamentary Association

- 23 Clause 1 gives effect to the core purpose of the Bill in respect of the CPA. It enables His Majesty by Order in Council to provide for the CPA to be treated in a manner comparable to an international organisation. Such treatment includes the conferral of the legal capacities of a body corporate; the provision of privileges and immunities commensurate with its functional needs in respect of the CPA and its Secretary General; and the application to the CPA of relevant statutory provisions relating to international organisations.
- 24 Subsection (1) provides that the Order in Council may specify an organisation named the Commonwealth Parliamentary Association, whether established before or after the Bill is passed. Subsection (2) further provides that the Order in Council may exclude from its application any branches or other subordinate bodies of the CPA. These particular powers reflect the constitutional arrangements of the CPA – including its current registration with the Charity Commission for England and Wales - and will facilitate its proposed future operating model. They will also enable the treatment comparable to an international organisation to be limited to the core international organs of the CPA, such as the Secretariat; it is not intended that any privileges, immunities or other facilities would be extended to any of the national or sub-national branches of the CPA, including the UK branch.
- 25 Subsection (1)(a) enables conferral on the CPA of the legal capacities of a body corporate. This power is informed by the equivalent power at section 1(2)(a) of the 1968 Act. The key capacities relevant to the operation of an international organisation in the UK are the capacity to conclude contracts, to acquire and dispose of property, and to institute and be party to legal proceedings.
- 26 Subsection (1)(b) enables the provision of specific privileges and immunities in respect of the CPA. These are limited to the privileges and immunities set out in Part 1 of the Schedule. The actual suite of privileges and immunities to be accorded, including relevant exceptions and limitations, will be determined on the basis of the functional need of the organisation and will be specified in the Order in Council. This power is informed by the equivalent power at section 1(2)(b) of the 1968 Act.
- 27 Subsection (1)(c) enables the provision of specific privileges and immunities in respect of the Secretary-General of the CPA. These are limited to the privileges and immunities set out in Part 2 of the Schedule. Sub-paragraph (ii) ensures that this facility may be provided to the person who leads the international Secretariat of the CPA, even if the name of the role were to change in a future reorganisation. The provision of privileges and immunities is limited to the Secretary-General of the CPA in recognition of the Secretary-General's international and leadership role within the organisation; it is not proposed that any other officers or staff of the CPA should be accorded privileges and immunities by virtue of the Bill. This power is informed by the equivalent power at section 1(2)(c) of the 1968 Act.
- 28 Subsection (1)(d) provides for the Order in Council to specify certain statutory provisions in relation to international organisations which should apply in relation to the CPA with any necessary modifications. This provision will ensure that the CPA can be accorded comparable treatment to an international organisation, in particular where the definition of international organisation in the legislation is limited to inter-governmental organisations.

## Clause 2: The International Committee of the Red Cross

- 29 Clause 2 gives effect to the core purpose of the Bill in respect of the ICRC. It enables His Majesty by Order in Council to provide for the ICRC to be treated in a manner comparable to

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an international organisation. Such treatment includes the conferral of the legal capacities of a body corporate; the provision of privileges and immunities commensurate with its functional needs in respect of the ICRC and its officers and servants; and the application to the ICRC of relevant statutory provisions relating to international organisations. Clause 2 also provides for the protection of certain information provided confidentially to His Majesty's Government by the ICRC from legal disclosure requirements, reflecting the ICRC's standard working method of confidentiality which is designed to protect its staff and operations in active conflict zones.

- 30 Subsection (1)(a) enables conferral on the ICRC of the legal capacities of a body corporate. This power is informed by the equivalent power at section 1(2)(a) of the 1968 Act. The key capacities relevant to the operation of an international organisation in the UK are the capacity to conclude contracts, to acquire and dispose of property, and to institute and be party to legal proceedings.
- 31 Subsection (1) (b) enables the provision of specific privileges and immunities in respect of the ICRC. These are limited to the privileges and immunities set out in Part 1 of the Schedule. The actual suite of privileges and immunities to be accorded, including relevant exceptions and limitations, will be determined on the basis of the functional need of the organisation and will be specified in the Order in Council. This power is informed by the equivalent power at section 1(2)(b) of the 1968 Act.
- 32 Subsection (1)(c) enables the provision of specific privileges and immunities in respect of the ICRC's personnel. These are limited to the privileges and immunities set out in Part 2 of the Schedule. Sub-paragraphs (i) and (ii) apply this provision to specified officers of the ICRC as well as other specified classes of officers and servants, for example ICRC delegates posted to the Regional Delegation in London. This power is informed by the equivalent power at section 1(2)(c) and (d) and (3)(b) of the 1968 Act.
- 33 Subsection (1)(d) provides for the Order in Council to specify certain statutory provisions in relation to international organisations which should apply in relation to the ICRC with any necessary modifications. This provision will ensure that the ICRC can be accorded comparable treatment to an international organisation, in particular where the definition of international organisation in the legislation is limited to inter-governmental organisations.
- 34 Subsection (1)(e) allows for certain confidential information that is held by the UK government and that was obtained from the ICRC to be exempt from legal disclosure requirements. This exemption applies to any disclosure requirement imposed by an order of a court or tribunal in proceedings (except criminal proceedings) or a statutory provision or other rule of law.
- 35 Subsection (2) defines the term "protected ICRC information" to which the exemption from disclosure requirements applies as confidential information held by the UK Government and obtained by it from the ICRC. Subsection (3), which echoes the confidentiality test in section 27(3) of Freedom of Information Act 2000, defines what the term "confidential" means for the purposes of subsection (2)(c).
- 36 Subsection (4) establishes that exemption from disclosure requirements does not apply to information if the ICRC has published it or has agreed to its disclosure for the purpose of the disclosure requirement in question. Subsection (4)(b) allows for the ICRC to consent to disclosure for the purposes of one set of proceedings but not for another.
- 37 Subsection (5) further confirms that nothing in clause 2 or an Order in Council made under it affects the common law rules about the withholding of information on the grounds of public interest immunity. This is to provide certainty that public interest immunity may still be available in cases which fall under the confidential information exemption in this Bill.

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### Clause 3: Evidence

- 38 This clause provides for the Secretary of State to be able to issue a certificate stating matters of fact relating to the status of persons who may have privileges or immunities by virtue of an Order in Council made under clause 1 or 2 the Bill. Such a certificate is to be treated as conclusive evidence of those facts for the purposes of proceedings.
- 39 This clause has a similar effect to equivalent provisions in comparable enactments, such as section 8 of the 1968 Act, section 4 of the Diplomatic Privileges Act 1964 or section 11 of the Consular Relations Act 1968.

### Clause 4: Orders in Council

- 40 Orders in Council are used when an ordinary statutory instrument would be inappropriate, such as for transferring responsibilities between government departments. They are issued by and with the advice of His Majesty's Privy Council and are approved in person by the monarch. It is long standing practice that privileges and immunities are conferred by Order in Council. Examples include section 1(2) of the 1968 Act and section 12(1) of the 2002 Act.
- 41 Subsection (1) of this clause provides that any Order in Council made under clause 1 or 2 of the Bill is subject to the draft affirmative Parliamentary procedure. Statutory instruments that are subject to the 'draft affirmative procedure' require the approval of both Houses of Parliament before they may have effect.
- 42 Subsection (2) provides further detail as to the scope and extent of the delegated legislation making power under clauses 1 and 2. In particular, it provides that an Order in Council:
- a. may make different provision for different cases and for different persons; and
  - b. may contain consequential, supplementary, incidental, transitional or saving provision.
- 43 This subsection (2) also provides the enabling power for two important aspects which are fundamental to the operation and management of privileges and immunities in respect of an international organisation. First, the Order in Council may specify circumstances where privileges, immunities or exemptions do not apply, whether because of an exception to those privileges, immunities or exemptions or because they have been waived by the organisation. Second, the Order in Council may specify that fiscal reliefs and exemptions are subject to arrangements or conditions imposed by the Secretary of State or the Commissioners of His Majesty's Revenue and Customs (as the case may be). This will facilitate the application to the organisations of the existing administrative schemes and processes in respect of international organisations which are administered by, among others, the FCDO and HMRC.

### Clause 5: Interpretation

- 44 The definition of "statutory provision" ensures that it is possible for provision to be made treating the CPA and the ICRC as international organisations in respect of all relevant legislation, both primary and secondary, and including devolved legislation in Scotland, Wales and Northern Ireland.

### Schedule

- 45 Part 1 of the Schedule sets out the privileges and immunities which may be conferred on the CPA or the ICRC.
- 46 Part 2 of the Schedule sets out the privileges and immunities which be conferred on the personnel of the CPA or the ICRC.

- 47 It is customary practice to grant privileges and immunities to international organisations and related persons. The privileges and immunities which may be conferred on international organisations by Order in Council under the 1968 Act have informed the list of privileges and immunities in the Schedule.
- 48 Conferral of the privileges, immunities and exemptions may be subject to specific exceptions in accordance with clause 4(2)(b) of the Bill, while any exemption or relief from a tax or duty may be made subject to arrangements or conditions in accordance with clause 4(2)(c).

## Commencement

- 49 The Bill comes into force on the day on which it is passed.

## Financial implications of the Bill

- 50 The financial implications of the draft Bill are minimal. The same applies to manpower implications. There will be little or no loss of revenue as a result of the fiscal exemptions or reliefs which will be granted by delegated legislation made by virtue of the provisions in the Bill. Refunds of certain taxes will be made in accordance with the separate arrangements between His Majesty's Government, and the CPA and ICRC respectively. Administration of the arrangements will be resourced from the existing resources responsible for managing the privileges and immunities with international organisations in the UK.

## Parliamentary approval for financial costs or for charges imposed

- 51 Part 1 of the Schedule allows Orders in Council under the Bill to grant relief from taxes and duties. In some cases that relief may be given by means of a refund of amounts already paid. A money resolution was passed in the Commons on 28 February 2024 to cover these refunds.

## Compatibility with the European Convention on Human Rights

- 52 Because the Bill is a Private Member's Presentation Bill, there is no requirement on the Minister to make a statement under section 19(1) of the Human Rights Act 1998. Nevertheless, the FCDO considers that:
- a. the provisions of the Bill are compatible with the Convention rights; and
  - b. the powers to make delegated legislation under the Bill may, in the future, be exercised compatibly with the Convention rights.

## Annex A – Territorial extent and application in the United Kingdom

53 Clause 6 sets out the territorial extent of the clauses in the Bill. The extent of a Bill is the legal jurisdiction where it forms part of the law. The extent of a Bill can be different from its application. Application refers to where it has practical effect.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	No	Yes	No	Yes	No
Clause 2	Yes	Yes	No	Yes	No	Yes	No
Clause 3	Yes	Yes	No	Yes	No	Yes	No
Clause 4	Yes	Yes	No	Yes	No	Yes	No
Clause 5	Yes	Yes	No	Yes	No	Yes	No
Clause 6	Yes	Yes	No	Yes	No	Yes	No

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