

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

Revised Memorandum from the Foreign, Commonwealth and Development Office to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Commonwealth Parliamentary Association and International Committee of the Red Cross (Status) Bill (“the Bill”). The Bill was introduced in the House of Commons on 12 December 2023. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The purpose of the Bill is to enable the Government to treat the International Committee of the Red Cross (“ICRC”) and the Commonwealth Parliamentary Association (“CPA”) in a comparable manner to international organisations of which the United Kingdom, or His Majesty’s Government in the United Kingdom, is a member.
3. The Bill creates powers enabling the following provision to be made by Order in Council in respect of each of the ICRC and the CPA:
 - i. to confer on the organisation the legal capacities of a body corporate;
 - ii. to grant a bespoke package of privileges and immunities for the organisation, its information and premises and its staff;
 - iii. to provide that references to international organisations in general legislation can be applied to the organisation.
 - iv. to allow for certain confidential information that the ICRC shares with the UK government to be exempted from legal disclosure requirements.

C. DELEGATED POWERS

4. The purpose of the Bill is to enable the ICRC and the CPA 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. Such treatment usually entails the conferral of the legal capacities of a body corporate and of specific privileges and immunities relating to the organisation, its property and information, and its personnel, consistent with the particular functional needs of that organisation.

5. The Government notes that it is the usual practice for privileges and immunities to be conferred on organisations by statutory instrument using delegated powers under the International Organisations Act 1968 or the International Development Act 2002. The key power at section 12 of the 2002 Act applies to international financial institutions; relevant powers in the 1968 Act include:
 - i. Section 1 for organisations of which the United Kingdom, or His Majesty's Government in the United Kingdom, and any other sovereign Power, or the government of any other sovereign Power, are members;
 - ii. Section 4 for organisations of which two or more sovereign Powers or their governments are members, but of which the United Kingdom or His Majesty's Government in the United Kingdom are not;
 - iii. Section 4A for international commodity organisations;
 - iv. Section 4B for the European Union and Euratom; and
 - v. Section 5 for international tribunals.

6. In deciding whether matters should be specified on the face of the Bill or dealt with in delegated legislation, the Department has carefully considered the need:
 - a. to avoid too much technical and administrative detail on the face of the Bill;
 - b. to provide flexibility in drafting separate and specific arrangements with each organisation, so that privileges and immunities can be adjusted and conferred without the need for further primary legislation to support the functional needs of each organisation;
 - c. to allow those detailed separate arrangements to be implemented and kept up to date within basic structures and principles that are set out in primary legislation, subject to Parliament's right to challenge inappropriate use of powers;
 - d. To provide scope for legislation relating to international organisations to be made applicable to the CPA and ICRC, commensurate with each organisation's functional needs.

7. The Government further notes that the powers under the 1968 Act or 2002 Act enumerated in paragraph 5 do not apply to the ICRC or the CPA given the unique nature and international mandates of those two organisations. Therefore, bespoke enabling powers are required in this Bill.

Clause 1 power to confer on the CPA the legal capacities of a body corporate, to provide the CPA and its Secretary General with privileges and immunities and to provide for references to international organisations in statutory provisions to be read as including references to the CPA.

Power conferred on: His Majesty

Power exercised by: Order in Council

Parliamentary procedure: draft affirmative

Context and Purpose

8. As described in paragraphs 2 to 7 above, the purpose of the Bill as a whole is to enable the ICRC and the CPA 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. This power will enable the Government to provide for such treatment in respect of the CPA by way of Order in Council.

Justification for taking the power

9. The Government proposes to conclude a written arrangement with the CPA which will record the mutual understanding of both the Government and the organisation as to its treatment, and in particular the specific package of privileges and immunities which will be granted. Given the need to consult and discuss that arrangement with the organisation and other relevant stakeholders, it was not feasible to conclude those arrangements before the introduction of the Bill. The inclusion of a delegated legislation making power will enable the Government to implement the arrangement at an appropriate time once it has been concluded and to ensure that the privileges and immunities conferred are not greater in extent than those specified in the arrangement. It would not be appropriate to confer privileges and immunities directly on the face of the Bill in the absence of such an arrangement between the Government and the organisation.

Justification for the procedure

10. The Government proposes that the procedure applicable to a statutory instrument made under this power should be the draft affirmative procedure. This will enable Parliament to scrutinise together both the arrangement concluded between the Government and the CPA and the implementing legislation before resolving to approve the statutory instrument.
11. As noted in paragraph 5 above, this power is comparable to delegated legislation making powers in the International Organisations Act 1968 and the

International Development Act 2002. In both cases, statutory instruments made under those powers are subject to the draft affirmative procedure, see section 10(1) of the 1968 Act and section 12(4) of the 2002 Act respectively.

Clause 2 power to confer on the ICRC the legal capacities of a body corporate, to provide the ICRC and specified officers and servants with privileges and Immunities, to provide for references to international organisations in statutory provisions to be read as including references to the ICRC, and to provide for certain protected ICRC information to be exempt from legal disclosure requirements

Power conferred on: His Majesty

Power exercised by: Order in Council

Parliamentary procedure: draft affirmative

Context and Purpose

12. As described in paragraphs 2 to 7 above, the purpose of the Bill as a whole is to enable the ICRC and the CPA 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. This power will enable the Government to provide for such treatment in respect of the ICRC by way of Order in Council.
13. Clause 2 also addresses the risk of disclosure, including in UK court proceedings, of information related to the ICRC's sensitive work which has been provided in confidence to the UK government by the ICRC. This power will allow for certain confidential information that is held by the UK government that was obtained from the ICRC to be exempt from any disclosure requirement imposed by a court in proceedings (except criminal proceedings) or a statutory provision or other rule of law.

Justification for taking the power

14. The Government proposes to conclude a written arrangement with the ICRC which will record the mutual understanding of both the Government and the organisation as to its treatment, and in particular the specific package of privileges and immunities which will be granted. Given the need to consult and discuss that arrangement with the organisation and other relevant stakeholders, it was not feasible to conclude that arrangement before the introduction of the Bill. The inclusion of a delegated legislation making power will enable the Government to implement the arrangement at an appropriate time once it has been concluded and to ensure that the privileges and immunities conferred are not greater in extent than those specified in the arrangement. It would not be appropriate to confer privileges and immunities directly on the face of the Bill in the absence of such an arrangement between the Government and the organisation.

15. 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 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.
16. The enabling power included in the Bill to allow for certain confidential information that the ICRC shares with the UK government to be exempted from legal disclosure requirements is necessary because 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.
17. 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 cases. Accordingly, the provision can be exercised compatibly with Article 6 of the European Convention on Human Rights.

Justification for the procedure

18. The Government proposes that the procedure applicable to a statutory instrument made under this power should be the draft affirmative procedure. This will enable Parliament to scrutinise together both the arrangement concluded between the Government and the ICRC and the implementing legislation before resolving to approve the statutory instrument.
19. As noted in paragraph 5 above, this power is comparable to delegated legislation making powers in the International Organisations Act 1968 and the International Development Act 2002. In both cases, statutory instruments made under those powers are subject to the draft affirmative procedure, see section 10(1) of the 1968 Act and section 12(4) of the 2002 Act respectively.

Department Name: Foreign, Commonwealth and Development Office
Date: 29 April 2024

