

Written Ministerial Statement

The content of this written ministerial statement is as received at the time from the Minister. It has not been subject to the official reporting (Hansard) process.

Department of Justice

POLICE CRIME SENTENCING & COURTS ACT 2022: EXTRACTION OF INFORMATION FROM ELECTRONIC DEVICES — CODE OF PRACTICE

Published on Monday 24 October 2022.

Mrs Long (The Minister of Justice): I am writing to inform you that Jeremy Quin MP, Minister of State for Crime and Policing has advised that the Home Office intend to introduce the provisions in Chapter 3 of Part 2 of the Police, Crime, Sentencing and Courts Act 2022 (PCSC Act) in relation to the extraction of information from electronic devices across all UK jurisdictions.

As you are aware, on 7 March 2022 the Assembly approved the following Legislative Consent Motion: ***“That this Assembly agrees in principle to the extension to Northern Ireland of the provisions in Chapter 3 of Part 2 of the Police Crime, Sentencing and Courts Bill, in so far as they relate to Northern Ireland, and agrees that commencement of those provisions would be conditional on Assembly agreement to consider whether the Code of Practice, following the public consultation, complies with protected rights and requirements.”***

It was therefore my intention to bring the Code of Practice back to the Assembly following the public consultation, for discussion and agreement and ensure that members of the Northern Ireland Assembly were content that the Code of Practice complied with protected rights and requirements following the outcome of the Home Office public consultation process.

The Home Office is concerned that without lawful authority, there is a risk that extracting data from a phone handset increases the likelihood of legal challenge and creates a capability gap in policing. As a result, the Home Office intend to introduce the provisions in Chapter 3 of Part 2 of the PCSC Act 2022 in relation to the extraction of information from electronic devices at the earliest opportunity and across all jurisdictions. Jeremy Quin MP has indicated that the Home Office has updated the Code of Practice to reflect feedback from the consultation and address the issues raised by the Department of Justice. However, in the absence of the Assembly, and given that the powers cover a mix of devolved and non-devolved issues he regrets that the Home Office cannot wait for Northern Ireland Assembly agreement before commencing the provisions.

The Home Office has advised that a case currently being heard by the Investigatory Powers Tribunal, with a judgment expected in October 2022, has the potential to adversely impact current practice by the police on the extraction of information from electronic devices.

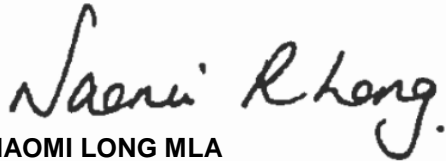
I have replied to Jeremy Quin MP making it clear that the proposed course of action is outwith the conditions stipulated by the Assembly and agreed with his predecessor. I have advised that I am not in a position to seek Assembly agreement and therefore the decision to proceed, contrary to those assurances, is disappointing. While I regret that we are not in a position to take a collective decision about commencement as intended, I am however reassured that the outstanding issues in the Code of Practice have been addressed. Had the Assembly been fully functioning, I would have sought to assure colleagues that the Code of Practice had been updated to reflect the issues raised and agree commencement.

The powers in Chapter 3 of Part 2 strengthen the law that governs digital information extraction from the digital devices of complainants, witnesses and others, such as deceased or missing persons. It is important that victims and witnesses here can benefit from the increased protections that the powers and the code offer. The powers cannot be commenced until the Code of Practice has been issued as, in order to use the powers lawfully, authorised persons (listed in Schedule 3) must have due regard to

the Code of Practice. It is my understanding that subject to final approval by Parliament, the new extraction powers and Code of Practice will come into force on the 8th November 2022.

I attach a link to the Code of Practice laid in parliament:

[Extraction of information from electronic devices: code of practice - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/106422/Code_of_Practice_-_Extraction_of_information_from_electronic_devices.pdf)

A handwritten signature in black ink that reads "Naomi Long". The signature is written in a cursive style with a large initial 'N' and a long, sweeping tail on the 'g'.

**NAOMI LONG MLA
MINISTER OF JUSTICE**