



**NORTHERN IRELAND
ASSEMBLY
COMMITTEE FOR JUSTICE**

Ms Linda Dillon
Chairperson
Committee on Procedures
Room 247
Parliament Buildings
Stormont
Belfast BT4 3XX

1 July 2020

Dear Linda

Westminster Acts Containing Provisions on Devolved Matters Yet To Be Commenced

At its meeting on 28 May 2020 the Committee for Justice considered information provided by the Department of Justice relating to two separate Acts of Parliament passed during the absence of the Assembly. Both Acts – the Criminal Finances Act 2017 and the Crime (Overseas Production Orders) Act 2019 - contain provisions relating to devolved matters.

In normal circumstances the Assembly would have been asked to agree a Legislative Consent Motion (LCM) in relation to the devolved provisions. In the absence of the Assembly this could not be done however, during the passage of both Bills through Westminster, Home Office Ministers made a commitment that the provisions would not be commenced and come into operation in Northern Ireland without appropriate consent being obtained.

The Minister of Justice advised the Committee that it was her intention to notify the Home Secretary of her agreement to commence the relevant provisions of both Acts in Northern Ireland. She also indicated that she had advised other Executive Ministers of her intention by way of a Ministerial Colleagues letter and in due course she intended to make a written statement to the Northern Ireland Assembly.

Noting this appeared to be a new scenario without a pre-determined handling protocol or mechanism in place for it, the Committee for Justice wants to ensure that the procedure to be used is the correct and appropriate one, particularly if it sets the precedent for the handling of any future such Acts requiring agreement to be given for devolved provisions to be commenced. The Committee therefore agreed to write to the First Minister and deputy First Minister and ask whether this position had occurred before and, if so, what handling arrangements were adopted and whether there are any similar Acts across all Departments that will require decisions and agreement to commence devolved provisions. The Committee also asked the Executive Office to consider what mechanism could be put in place to establish the views of, and consent from, the Assembly regarding the commencement of provisions in Acts relating to devolved matters where, if the legislation had not already completed its passage through Westminster, a Legislative Consent Motion would be required.

At its meeting on 23 June 2020, the Committee considered the response from the First Minister and deputy First Minister which outlined that this position had not arisen before and there is one other Act – the Digital Economy Act 2017 - passed during the period between 2017 and 2020 when the Assembly was not operating, in which some devolved provisions remain to be commenced. The Act falls within the responsibilities of the Department of Finance.

The First Minister and deputy First Minister advised the Justice Committee that, given the very limited number of cases, the unique circumstances in which these have arisen and that such circumstances are unlikely to arise again, they are of the view that the approach adopted by the Minister of Justice is proportionate, transparent and strikes an appropriate balance between the normal Ministerial authority to commence provisions and the courtesy of consulting the Assembly in view of the absence of its involvement in the earlier stages of the legislative process. They therefore do not consider that a more specific mechanism is required. However, if the Assembly wishes to consider the need for such a mechanism their officials would be happy to engage with Assembly officials to consider the issues further.

The Committee for Justice agreed to write to the Committee on Procedures to highlight the issue and ask it to consider the matter and whether there is a need for a

mechanism to be put in place to establish the views of, and consent from, the Assembly regarding the commencement of provisions in Acts relating to devolved matters where, if the legislation had not already completed its passage through Westminster, a LCM would be required.

I enclose a copy of the correspondence with the First Minister and deputy First Minister on the matter and a copy of a letter from the Minister of Justice that also covers the issue to assist the Committee on Procedures consideration of the matter.

Yours sincerely

Paul Givan
Chairman, Committee for Justice

Enc



**NORTHERN IRELAND
ASSEMBLY
COMMITTEE FOR JUSTICE**

**First Minister and deputy First Minister
SD03 Stormont Castle
Stormont Estate
Belfast
BT4 3TT**

2 June 2020

Dear First Minister and deputy First Minister

Westminster Acts Containing Provisions on Devolved Matters yet to be Commenced

At its meeting on 28 May 2020 the Committee for Justice considered information provided by the Department of Justice relating to two separate Acts of Parliament passed during the absence of the Assembly. Both Acts – the Criminal Finances Act 2017 and the Crime (Overseas Production Orders) Act 2019 - contain provisions relating to devolved matters.

In normal circumstances the Assembly would have been asked to agree a Legislative Consent Motion (LCM) in relation to the devolved provisions. In the absence of the Assembly this could not be done however, during the passage of both Bills through Westminster, Home Office Ministers made a commitment that the provisions would not be commenced and come into operation in Northern Ireland without appropriate consent being obtained.

The Minister of Justice has advised the Committee that it is her intention to notify the Home Secretary of her agreement to commence the relevant provisions of both Acts in Northern Ireland. She has also indicated that she has advised other Executive Ministers of her intention by way of a Ministerial Colleagues letter and in due course she intends to make a written statement to the NI Assembly.

This appears to be a new scenario without a pre-determined handling protocol or mechanism in place for it. While the Justice Committee appreciates that the LCM mechanism does not apply in these situations, it does want to ensure that the procedure to be used is the correct and appropriate one, particularly if it will set the precedent for the handling of any future such Acts requiring agreement to be given for devolved provisions to be commenced.

The Committee therefore agreed to ask the Executive Office for the following information:

- Has this position, in which agreement to commence devolved provisions in Westminster Acts is required, occurred before and if so what handling arrangements were adopted
- Are there any other similar Acts across all Departments that will require decisions and agreement to commence devolved provisions

The Committee also agreed to ask the Executive Office to consider what mechanism can be put in place to establish the views of, and consent from, the Assembly regarding the commencement of provisions in Acts relating to devolved matters where, if the legislation had not already completed its passage through Westminster, a LCM would be required.

I look forward to a response at your earliest convenience to enable the Committee to progress these matters.

Yours sincerely

Paul Givan
Chairman, Committee for Justice

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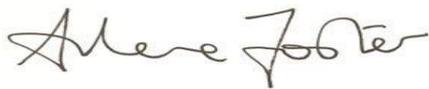
Dear Paul,

WESTMINSTER ACTS CONTAINING PROVISIONS ON DEVOLVED MATTERS YET TO BE COMMENCED

You wrote to us on 2 June about procedural issues arising from information presented to the Committee by the Department of Justice about the commencement of devolved provisions in the Westminster Criminal Finances Act 2017 and the Crime (Overseas Production Orders) Act 2019. We understand that you have also written to the Minister of Justice about the approach adopted.

In response to the Committee's specific enquiries to us, this position has not arisen before and is a product of the specific circumstances prevailing between 2017 and 2020. One other Act was passed during this period – the Digital Economy Act 2017 – for which some devolved provisions remain to be commenced. This is a responsibility of the Department of Finance.

You also asked us to consider what mechanisms can be put in place to establish the views of and consent from the Assembly regarding the commencement of provisions in similar circumstances. Given the very limited number of cases, the unique circumstances in which these have arisen, and that such circumstances are unlikely to arise again, we believe that the approach taken by the Minister of Justice is proportionate and transparent and strikes an appropriate balance between the normal Ministerial authority to commence provisions and the courtesy of consulting the Assembly in view of the absence of its involvement in the earlier stages of the legislative process. We do not consider therefore that any more specific mechanism is required; it would of course be entirely appropriate for the Assembly to consider the need for such a mechanism on its own initiative and in those circumstances, our officials would be happy to engage with Assembly officials to consider the issues further.



**The Rt Hon Arlene Foster MLA
First Minister**



**Michelle O'Neill MLA
Deputy First Minister**

FROM THE OFFICE OF THE JUSTICE MINISTER



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3 June 2020

Dear Paul

Commencement of the Criminal Finances Act 2017

Thank you for your letter of 29 May following a briefing from officials on the commencement of the relevant provisions of the Criminal Finances Act 2017 (the CFA 2017). During the briefing officials committed to providing:

- Further details on the extra territorial scope of the provisions and in particular how the Asset Recovery provisions can be used in other jurisdictions; and
- What enforcement bodies/agencies are covered by each of the provisions and whether other Departments and Committees will be involved in the consultation on and scrutiny of relevant Codes of Practice and/or Regulations.

In your letter of 29 May the Committee asked for further information in relation to the commencement procedures for the provisions in the CFA 2017 as well as the mechanism that is available or could be put in place for the Committee and the Assembly to relay its views/opinion to the Home Secretary prior to her commencing the provisions that relate to devolved matters. This information is set out at Appendix 1 and hopefully shows the opportunity there will be for Members to be further engaged including through consultation on Codes of Practice, which will set out how the powers

should be operationalised in Northern Ireland. Detail on the extra-territorial scope of the provisions and enforcement bodies is set out at Appendix 2.

I note that you are also seeking advice on this matter from the First Minister and deputy First Minister. As explained by officials, and noted in the briefing paper shared with the Committee, there is no predetermined protocol to seek the retrospective consent of the Northern Ireland Assembly once the UK Parliament has legislated for devolved matters. We have considered this carefully, including with TEO officials, and could not identify a way to achieve this given the legislation has been passed already.

However, it is critical that a sound and justifiable case has been made for commencing the relevant provisions in Northern Ireland and that proceeding to commencement is supported. In order to meet the Home Office expectations and to satisfy myself that these provisions will help us maximise our collective efforts to tackle criminality, I have set out for Ministerial colleagues and the Justice Committee the rationale for progressing this work.

The CFA 2017 provisions will provide for new unexplained wealth orders, account freezing and forfeiture provisions and listed assets forfeiture provisions. These powers will significantly enhance existing powers and tools to tackle serious organised crime in Northern Ireland and I am keen that they should be available to the relevant enforcement agencies as soon as possible. I do not want Northern Ireland to have a weaker regime than other UK jurisdictions or to be considered as a 'safer' place to keep criminal assets. Organised crime does not observe geographical boundaries and therefore there is value in handling matters such as asset recovery consistently. These new and additional powers will strengthen and align regimes and further support law enforcement efforts to subvert the financial motivation of criminals.

There have been wide calls for the commencement of the powers in the CFA 2017, including from members of the Northern Ireland Assembly, particularly in relation to the new unexplained wealth order provisions and associated account freezing and forfeiture provisions and listed assets forfeiture provisions.

I want to reassure the Committee that the previous Executive was informed about the extension of the provisions to NI and both the Executive and the Justice Committee agreed that a Legislative Consent Memorandum [LCM] should be laid in the Assembly. An LCM was laid at the Assembly Business Office on 6 January 2017. The then Justice Committee considered the Legislative Consent Memorandum (as laid) on 12 January 2017 however the Northern Ireland Assembly was dissolved before the LCM debate could take place and the Bill achieved Royal Assent in April 2017.

While there is no pre-determined protocol to seek retrospective legislative consent for legislation which is now enacted, in keeping with the principles of the Sewel Convention, I have sought to update Executive colleagues and the Justice Committee of my intentions, which has been done through correspondence and briefing papers. I have not had any objections from Ministerial colleagues to date, and I am pleased to note that, while the Justice Committee has raised procedural points, Members are broadly supportive of the provisions.

Informing Ministerial Colleagues, the Justice Committee and advising members of the Northern Ireland Assembly of my intentions to proceed to commence the provisions by way of a Written Ministerial Statement, will I hope, provide a proportionate and pragmatic means of moving forward while recognising the unique circumstances of this particular issue.

I have also asked officials to make arrangements to provide an annual update to the Justice Committee on the use of the powers in the CFA 2017.

I trust that this information is helpful in addressing Committee members' procedural questions. I feel it is important to highlight to the Committee that these provisions became operational in other parts of the UK between 31 October 2017 and 16 April 2018. If there is any further delay in asking the Home Secretary to commence these provisions we could miss the opportunity to have them commenced in 2020. I know the Committee is aware of the calls for these provisions to be commenced and is keen to avoid any further delay in ensuring that law enforcement agencies and partners here

have the same capabilities and powers to recover the proceeds of crime, as their counterparts in England, Scotland and Wales.

As Justice Minister I believe that there is a compelling case to commence these provisions. I strongly believe that they are essential in the fight against serious organised crime. The Home Secretary has the primary role in terms of commencing the majority of the outstanding CFA 2017 provisions by commencement regulations at Parliament.

On that basis, and as set out in my letter to the Committee, I hope I have your support to issue a written Ministerial Statement to the Assembly and write to the Home Secretary seeking commencement of these provisions for Northern Ireland, which it is my intention to do no later than 19th June 2020.

Best regards.



NAOMI LONG MLA
MINISTER OF JUSTICE

Enc:

Appendix 1

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Appendix 2