

**FROM THE PERMANENT SECRETARY  
PETER MAY**



Rm B5.10, Castle Buildings  
Stormont Estate  
BELFAST BT4 3SG  
Tel: 028 9052 2992  
email: [peter.may@justice-ni.x.gsi.gov.uk](mailto:peter.may@justice-ni.x.gsi.gov.uk)

via email: [jim.mcmanus@niassembly.gov.uk](mailto:jim.mcmanus@niassembly.gov.uk)

Jim McManus  
Clerk to the Committee for Finance  
Northern Ireland Assembly  
Room 373, Parliament Buildings

22 April 2020

Dear Jim

### **THE FUNCTIONING OF GOVERNMENT (MISCELLANEOUS PROVISIONS) BILL**

Thank you for your letter of 27 March 2020, in which you asked for comment on the provisions of the above Bill. The Department of Justice's responsibilities relate to the offences and penalties aspects of the Bill and I have therefore limited my comments to Clauses 9 and 11 of the Bill.

2. The Department of Justice provides offences and penalties scrutiny and guidance to Assembly Departments during policy development and drafting of legislation to check that the proposed penalties: are proportionate; do not create unacceptable pressure on the justice system; and fit into the overall framework of criminal law in Northern Ireland.
3. With no such prior engagement on this Bill, key questions to assist with an assessment of impact on the justice system, such as how and by whom the offences and penalties will be enforced; the views of the Public Prosecution Service; the expected volume of court cases; whether new court procedures or forms are required; and an estimate of potential costs, particularly in relation to legal aid, are unknown.
4. As such, the Department can only offer comment on the offences and penalties provisions as currently presented in the Bill. These are problematic because they are too broadly drawn; not properly defined; and potentially criminalise legitimate working arrangements, such as the remote working arrangements many civil servants are currently operating under during the coronavirus pandemic.
5. For Clause 9, specifically – electronic communications for business purposes – the Department does not consider a criminal sanction is warranted and the maximum penalty of up to two years imprisonment when convicted on indictment is excessive. At most, if the Committee is satisfied that an offence and penalty should remain a part of any Bill going forward, the Department would consider a maximum penalty commensurate with a summary only conviction to be proportionate.

6. For Clause 11 – disclosure of confidential information for financial or other potential benefit – the Department notes that Section 5 of the Official Secrets Act 1989 already makes it an offence for the unlawful disclosure of protected information (regardless of motivation) with a penalty of a maximum sentence of two years imprisonment upon conviction on indictment, or six months imprisonment or a fine not exceeding £5,000, or both, on summary conviction.

7. Notwithstanding the additional ‘for financial or other potential benefit’ aspect of Clause 11, which isn’t defined in either scale or nature (eg through the commission of a further offence), the Department does not consider the clause adds anything to the overall framework of criminal law in Northern Ireland. As such, the Department does not consider the offence to be necessary, and – given the penalty associated with the Official Secrets Act provisions – would assess the maximum penalty of up to five years imprisonment upon conviction on indictment to be disproportionate.

Yours sincerely

