

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,
Castle Buildings
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG
Tel: 028 90522744
DoJ.MinistersOffice@justice-ni.x.gsi.gov.uk

FROM: DALO

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TO: CHRISTINE DARRAH

**PROPOSED LEGISLATIVE CONSENT MOTION - AIR TRAFFIC MANAGEMENT
AND UNMANNED AIRCRAFT BILL**

Summary:

Business Area: Justice Policy Division

Issue: To consult the Justice Committee about the proposal for a Legislative Consent Motion that will allow senior Northern Ireland Prison Service (NIPS) and Youth Justice Agency (YJA) staff (rather than senior police officers) to receive applications from their respective staff and thereafter to authorise those staff to interfere with a drone. Such authorisations may only be given to prevent or detect a relevant offence as defined by the Prison Act (NI) 1953. These offences include assisting an escape or conveying unauthorised articles into a place of detention.

This provision will also apply across the rest of the UK by engaging other relevant legislation.

Action Required: To seek the Justice Committee's views on the proposal.

Officials Attending: Alan Smyth, Deputy Director, Prisons, Northern Ireland Prison Service.

Introduction

The purpose of this paper is to inform the Justice Committee that the Minister of Justice proposes to put a Legislative Consent Motion to the Assembly in relation to a specific

Northern Ireland-related aspect of a Westminster Bill, namely the Air Traffic Management and Unmanned Aircraft Bill. The relevant provision will allow senior Northern Ireland Prison Service (NIPS) and Youth Justice Agency (YJA) staff (rather than senior police officers) to receive applications from their respective staff and thereafter to authorise those staff to interfere with a drone. However, such authorisations may only be given to prevent or detect a relevant offence as defined by the Prison Act (NI) 1953. These offences include assisting an escape or conveying unauthorised articles into a place of detention. This provision will apply throughout the UK.

Background to the Bill

2. The shutting of Gatwick Airport in December 2018 because of drone activity and numerous incidents in and around prisons across England, Wales and Scotland where drones have been used to convey items such as controlled drugs, mobile phones, weapons and equipment to facilitate escapes have focused the Government's attention on tackling what is considered a fast growing problem. Indeed incidents have been numerous and wide-ranging. Drones were detected being used illegally in and around places of detention for the first time in England and Wales in 2014 and the following year 33 similar drone incidents were reported. By 2016 this had increased to 293 incidents and to 319 in 2017. 168 incidents were detected in 2018 and another 110 between January and November 2019. Although there has been some decrease in drone activity recently this has been put down in the main to an increase in low level counter measures. However, English prison authorities fully expect an increase in the near future as the tactics used by criminals continue to evolve and the technical capabilities of drones improve rapidly. For example drones are already being sold that are much less reliant on the operator having a direct line of sight, they are being fitted with obstacle avoidance technology and they have increased speed and range.

3. Drone incidents pose a security risk to prisons and have the potential to place the public at risk. In England and Wales particularly, drones are being used to smuggle contraband such as drugs, weapons and mobile phones as prisons get more adept at

preventing contraband coming in through visits and other more traditional methods of entry. These items place both prisoners and staff at risk, undermine hugely rehabilitation programmes and threaten the good order and security of establishments. Their importation into prisons is also often organised and funded by criminal networks that operate both within the custodial environment and in the community. Mobile phones are often the first thing to be flown in and these are then used to organise delivery of further contraband by drone. These phones are also used to direct criminal activity in the community. For example in 2015 prisoners received further sentences for orchestrating the importation of sub-machine guns into the UK, and their use of mobile phones smuggled into prison using a drone was instrumental in the facilitation of this crime.

4. It is also possible that drones may be used in future to facilitate an escape, again posing a direct threat to public safety and prison security. Indeed, an intelligence report from a police Regional Organised Crime Unit revealed plans to fly a metal grinder into a prison in the North West of England to facilitate an escape.

5. Prisons in the Republic of Ireland have also reported a rapid increase in drone activity.

6. Although incidents of drone use in Northern Ireland in the vicinity of places of detention have been rare the Department of Justice is keen to take the opportunity this Bill is presenting, and which covers reserved matters almost exclusively, to future proof this jurisdiction against a rise in drone activity for nefarious purposes.

Key aspects of the Bill

7. The Bill as currently drafted extends provisions to Northern Ireland that will also apply to England & Wales and to Scotland. Firstly, and as set out above, it will amend the Police Act 1997 to allow senior Northern Ireland Prison Service (NIPS) and Youth Justice Agency (YJA) staff (rather than senior police officers) to receive applications from their respective staff and thereafter to authorise those staff to interfere with a

drone. However, such authorisations may only be given to prevent or detect a relevant offence as defined by the Prison Act (NI) 1953. These offences include assisting an escape or conveying unauthorised articles into a place of detention. This will allow NIPS and the YJA along with the Scottish Prison Service and Her Majesty's Prison and Probation Service to take rapid action against real time drone incidents rather than making urgent, repetitive and recurring applications to senior police officers, responses to which have sometimes been delayed in England & Wales due to other policing pressures.

8. The Bill also introduces a range of new UK-wide police powers to allow for the better enforcement of unmanned aircraft provisions in the Air Navigation Order 2016 including the issuing of fixed penalty notices, stop and search, and requirements for drone operators to ground an aircraft, produce documents and make their craft available for inspection. Finally it will also create a number of new UK-wide offences and penalties for failure to comply with requirements under the Air Navigation Order 2016.

9. In this jurisdiction the measures contained in the Bill will provide the PSNI with greater enforcement capability, they will help NIPS and YJA detect and prevent offences committed using drones around places of detention, and they will act as a deterrent to those who would commit such offences.

Legislative Consent Motion

10. As the Bill falls within "civil aviation" which is a reserved function under Schedule 3 of the Northern Ireland Act 1998, Schedule 5 of the Scotland Act 1998 and Schedule 7A of the Government of Wales Act 2006 Northern Ireland Assembly legislative consent is **not** required for almost all of the NI related provisions. However, legal advice received from Northern Ireland Office legal advisers and the Department for Transport has confirmed that the specific proposal to allow senior NIPS and YJA officials to authorise counter-drone measures **will need legislative consent** from the Northern Ireland Assembly as it confers a new function of the Department of Justice.

Next Steps and Timing

11. Subject to the views of the Committee, we aim to table the legislative consent motion in the Assembly at the earliest opportunity. In terms of timing the Department for Transport has indicated that it would welcome a response by May in order to ensure the inclusion of the authorisations provision in the Bill. The Committee will wish to note that Lords 1st and 2nd readings plus committee stage have been completed. However, at time of writing the Lords' report stage date is yet to be announced. Moreover, the Bill started its Parliamentary journey in the Lords so all Commons stages plus consideration of amendments will still need to take place after the Lord's stages have been completed.

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