

FROM THE OFFICE OF THE JUSTICE MINISTER



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FROM: Departmental Assembly Liaison Officer

DATE: 20 APRIL 2020

TO: CHRISTINE DARRAH

LEGISLATIVE CONSENT MOTION: PROVISIONS FOR EXTRA TERRITORIAL JURISDICTION IN THE UK DOMESTIC ABUSE BILL

SUMMARY

Business Area: Criminal Justice Policy and Legislation Division

Issue: Proposed Legislative Consent Motion to allow for inclusion of amendments in the UK Domestic Abuse Bill. These amendments will allow the UK to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

Restrictions: None.

Action Required: Members are asked to consider the proposal to seek the approval of the Assembly to include the amendments in the UK Bill by means of a Legislative Consent Motion.

Officials attending: N/A, this is a written briefing.

Introduction

The Domestic Abuse (DA) Bill in Westminster includes provisions specifically to allow the UK Government to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

The relevant necessary provisions extend the power of the UK courts to try in the home jurisdiction certain sexual and violent offences which have been committed abroad.

2. The Bill, which was introduced in the House of Commons on 3 March will carry the list of necessary offences for England and Wales, Scotland and Northern Ireland, subject to legislative consent on the part of the devolved institutions. This letter seeks the Committee's view to bringing forward a legislative consent motion to allow the provisions for Northern Ireland to be carried in the DA Bill.

Background

3. The Istanbul Convention requires States Parties to take necessary legislative or other measures to criminalise intentional conduct that would constitute violence against women and domestic and sexual violence, specifically:

- a. Psychological violence
- b. Stalking
- c. Physical violence
- d. Sexual violence, including rape
- e. Forced marriage
- f. Female genital mutilation
- g. Forced abortion and forced sterilisation
- h. Sexual harassment
- i. Aiding or abetting and attempt in relation to Articles 33-40

4. It also requires State Parties to take the necessary legislative or other measures to establish extra territorial jurisdiction (ETJ) over any offence which falls under the above categories.

5. In Northern Ireland, the courts already have extraterritorial jurisdiction for some of the offences required by the Convention such as forced marriage, trafficking, female genital mutilation and sexual offences against children. However, there are still a number of offences, including rape and sexual assault of a person over 18, where it does not yet apply and where compliance requires changes to domestic law.

6. Accordingly, the Bill contains provisions to give domestic effect to the extraterritorial requirements of the Convention. These include adding a number of sexual and violent offences.

Provisions which extend and apply to Northern Ireland

7. The Bill's main domestic abuse provisions will apply only to England and Wales. The provisions which relate to Northern Ireland are those which specify the offences which, if committed abroad, by a UK national or a person resident in NI, can be tried in the courts here. The list of offences is attached at [Annex A](#). They represent the equivalent offences in Northern Ireland to those being added for England and Wales and Scotland, except in relation to domestic abuse and stalking. ETJ provision for the proposed NI domestic abuse offence is contained in the Domestic Abuse and Family Proceedings Bill, currently before the Assembly. A Stalking Bill is also scheduled for introduction to the Assembly later this year and it too will likely contain provisions for prosecution of offences which occurred overseas. In the meantime the offence of putting people in fear of violence and the inclusion of sexual and violent offences is considered by the UK Government to be sufficient to meet the requirements of the Convention for all the categories in the above list and will allow for ratification.

8. While the ability to make these changes is within the legislative competence of the Assembly, the Minister considers it appropriate that these amendments are enacted within the Westminster Bill. The Bill has already been introduced in Parliament and, with the legislative constraints in the current mandate, it would not be possible to bring equivalent provision via an Assembly Bill within the same timescale. The Domestic Abuse Bill in the Assembly is unlikely to reach completion until next year, thereby preventing ratification of the Convention until after that.

9. The provisions carried in this Bill will cover all three jurisdictions of the UK and will enable the UK Government to ratify the Istanbul Convention.

Other jurisdictions

10. As well as for England and Wales, the Bill contains similar amendments to Scottish law which are necessary to allow for UK ratification and which fall within the legislative competence of the Scottish Parliament. A Legislative Consent Memorandum was lodged with the Scottish Parliament on 16 March.

Next Steps

11. The Ministry of Justice are estimating that the last amending stage of the Bill will be in September but, given the summer recess, have asked that we try to ensure that the matter is considered by the Assembly before July.

12. The Minister would be grateful for the Committee's cooperation to enable a Legislative Consent Memorandum to be laid before the Assembly, subject to Executive approval, for debate before the summer recess. Officials will, of course, assist with any further queries the Committee may have.

Departmental Assembly Liaison Officer

ANNEX A

Offences in Northern Ireland to be included in Domestic Abuse Bill provisions for extra territorial jurisdiction	
Putting people in fear of violence	Article 6 Protection from Harassment (Northern Ireland) Order 1997
Murder and manslaughter	common law
Actual bodily harm	section 47 Offences Against the Person Act 1861
Grievous bodily harm	section 20 Offences Against the Person Act 1861
Grievous bodily harm with intent:	section 18 Offences Against the Person Act 1861
Child destruction	section 25 Criminal Justice (Northern Ireland) Act 1945
Administering poison or noxious thing so as to endanger life or inflict grievous bodily harm	section 23 Offences Against the Person Act 1861
Administering poison or noxious thing with intent to injure, aggrieve or annoy another person	section 24 Offences Against the Person 1861
Rape	Article 5 Sexual Offences (Northern Ireland) Order 2008
Assault by penetration	Article 6 Sexual Offences (Northern Ireland) Order 2008
Sexual assault	Article 7 Sexual Offences (Northern Ireland) Order 2008
Causing a person to engage in sexual activity without consent:	Article 8 Sexual Offences (Northern Ireland) Order 2008