



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Christine Darrah
Clerk, Committee for Justice
Room 242, Parliament Buildings
Stormont
Belfast
BT4 3XX

By email to: committee.justice@niassembly.gov.uk

21 June 2021

Dear Christine,

Thank you for your correspondence, dated 3 June 2021, in respect of the Commission's written advice on the Police, Crime, Sentencing and Courts Bill and particular issues that may be extended to Northern Ireland by way of legislative consent motion.

I note the Department's response to the Commission's recommendations, including comments from the Home Office, and can address each in turn.

Extraction of information from mobile devices

Code of practice

The Commission notes the position of the Home Office in respect of the sequencing of the legislation and Code of Practice. The Commission welcomes the engagement between the Department the Home Office on human rights compliance. The Commission awaits the publication of the Code of Practice prior to making any further substantive comment.

Authorised persons

The Commission notes the clarification of the oversight of authorised persons, which includes the PONI and Information Commissioner. It remains unclear if there will be a requirement for authorised persons to publish statistics on the extent of the use of this powers. This may be an issue the Committee may wish to consider further.

Consultation

The Commission welcomes the position of the Home Office that consultation has already commenced and that an informal consultation on a draft will follow. The Commission would wish to participate in this consultation process from a human rights perspective.

Code of Practice

The Commission welcomes the agreement of the Home Office on its recommendation that the statutory code of practice should provide sufficiently detailed guidance so as to enable extraction in a manner that is ECHR compliant.

R v. Bater-James

The Commission notes that the Home Office has agreed with its recommendation that the Code of Practice should expressly address the legal guidance from the *R v. Bater-James* judgment and the impact of information extraction on victims of rape and sexual offences. It welcomes the Home Office's further engagement with the devolved administrations to ensure that such guidance is compatible with the NI legal process.

Amendments to the Crime (Overseas Productions Orders) Act 2019

ECHR safeguards

The Commission notes the additional information provided by the Home Office in respect of safeguards under Article 8 and 10 ECHR, focusing on judicial oversight. Effective monitoring of these oversight mechanisms should be developed in order to ensure that the State's obligations are being met and that safeguards are being applied in a manner that protects individuals from arbitrary interference under Article 8 and 10 ECHR.

Prescribed persons

The Commission notes the clarification that the Investigatory Powers Commissioner has independent oversight over prescribed persons under the current UK-US Agreement. Having been introduced in July 2020, this oversight is in its infancy and we will be interested to see how it works in practice. The Committee may wish to confirm that similar independent oversight would be put in place for in any future agreements of this nature.

Judicial Oversight

The Commission notes that the proposed judicial oversight has been extended in the present Bill. However, its recommendation relates to ensuring that the application of this oversight is monitored in order to ensure that the

implementation of this safeguard is being applied effectively. The response of the Home Office does not refer to this point.

Speeding courses as an alternative to prosecution

The Commission welcomes the position of the Department to accept our recommendations. The Commission would appreciate further engagement on its recommendations, including further information on the level of fees and the outcomes of the section 75 equality impact assessment.

Management of sex offenders

The Commission notes the response of the Department which clarifies that the Sexual Harm Prevention Order (SHPO) and Sexual Risk Orders (SRO) will replace the existing Sexual Offences Prevention Order and Foreign Travel Order, but that offenders in NI will continue to be managed under these existing orders. The Commission had sought further information on how those under SHPOs or SROs, and moving between the jurisdictions of the UK, would be identified and monitored. Our concerns about the practical application of the orders, as per chapter 3 of our advice, have not been addressed.

I hope this information is helpful and remain at the disposal of the Committee for any further engagement on these, or any other issues.

Yours sincerely,

Les Allamby Chief Commissioner