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15 November 2021

Dear Christine

**POLICE, CRIME, SENTENCING AND COURTS BILL – PROPOSED LEGISLATIVE  
CONSENT MOTION – COMMENTS ON DRAFT CODE OF PRACTICE**

Thank you for your letters dated 5 October and 1 November 2021.

I can confirm that the Minister of Justice has copied the latest advice received from the Northern Ireland Human Rights Commission (NIHRC) (as above) to Rt Hon Kit Malthouse MP, Minister for State for Crime and Policing in the Home Office.

The Department of Justice has also received an updated view on the Code from the Attorney General for Northern Ireland (AG). An outline of relevant issues has been provided to Kit Malthouse MP as follows:

- The Attorney General is not yet completely reassured regarding access to devices used by adults without the relevant capacity. In particular:
  - The AG notes that paragraph 65 of the Code merely notes that the adult's best interests 'should be taken into account'. In the AG's view, adult's best interests should be the determining factor. It would be better, in that regard, if the Code

provided that "...authorised persons should not rely on the decision of another to agree to hand over a device or consent to extraction unless the authorised person is assured that the person giving consent reasonably believes that it is in the user's best interests for the device to be handed over and extraction enabled."

- The AG feels that it would be preferable if the Code required an assessment of best interests to include having "... special regard to the person's past and present wishes and feelings, the beliefs and values that would be likely to influence the person's decision if he or she had capacity and the other factors that the person would be likely to consider if able to do so."

The decision by the Executive not to extend the provisions detailed in the Memorandum to Northern Ireland by way of a Legislative Consent Motion was on the basis that the Minister of Justice may bring the issue back to the Executive when the Code on the extraction of information from mobile devices had been drafted and consulted on.

Following receipt of a further iteration of the Code from the Home Office the Department has again sought the views of both the NIHRC and the AG and a response from both is currently awaited. The Minister is also exploring whether the provisions could be included in the Bill but not commenced until any outstanding issues in relation to the Code have been resolved. If possible from a Home Office perspective, the introduction and support for a LCM for these clauses would be subject to Executive agreement.

I will update you again when I have further information.

I trust that the Committee finds this helpful.

**CLAIRE MCCORMICK DALO**