

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG

Christine Darrah  
Clerk to the Committee for Justice  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

17 August 2021

Dear Christine

**POLICE, CRIME, SENTENCING AND COURTS BILL – PROPOSED LEGISLATIVE  
CONSENT MOTION**

Thank you for your letter of 2 July 2021 regarding the proposed Legislative Consent Motion. I have provided comments below on the issues raised by the NI Human Rights Commission on the relevant provisions that are proposed to apply to NI.

**Amendments to Crime (Overseas Production Orders) Act 2019**

The Home Office has advised DoJ officials that The Crime (Overseas Production Orders) Act 2019 (“COPO Act”) sets out the legal tests and conditions required for approving an overseas production order. Section 4 (6) requires that a Crown Court judge in England, Wales and Northern Ireland, or a judge of the High Court of Justiciary or the sheriff in Scotland, be satisfied that there are reasonable grounds to believe that all or part of the electronic data sought in an application for an overseas production order is likely to be of relevant evidence in respect of the indictable offence mentioned in the aforementioned application. This judicial consideration is supported by relevant Court Rules (for the purposes of Northern Ireland “The Crown Court (Amendment) Rules (Northern Ireland) 2021”). The Rules provide for applications to vary or revoke orders (see rule 62P).

Members of the UK judiciary are constitutionally independent and impartial; judicial satisfaction that the relevant statutory criteria are met is an essential condition precedent to the issue of a plethora of what the England and Wales Criminal Procedure Rules call 'investigation orders and warrants' and those orders which are analogous under the Crown Court Rules (Northern Ireland) 1979 (see the rules in, and the primary legislation referenced at, CrimPR Part 47 and Part VIII B of the NI Crown Court Rules).

The Investigatory Powers Commissioner (IPC) has been given oversight over any activity carried out under the COPO Act 2019 where such activity falls within their remit in relation to the UK-US Data Access Agreement, which has been designated under the COPO Act. Please see the link to the Statutory Instrument that gives the IPC this role [here](#). Consideration will be given to giving the IPC similar oversight in relation to the COPO Act under any future international cooperation agreements as and when they are agreed.

### **Human Remains**

DoJ officials have liaised with the Home Office who have advised that they made contact with the Independent Commissioner for the Location of Victims Remains (ICLVR) to discuss the new powers in the Policing, Crime, Sentencing and Courts Bill against the background of the functions of the ICLVR. The Home Office have advised that the ICLVR are content that the proposals do not have any adverse effects for the Commission or its endeavours.

### **Speeding courses as alternative to prosecution**

The Department has accepted the recommendation to complete a Section 75 screening exercise and, following approval of the LCM by the Assembly for the clause to extend to Northern Ireland. This will be carried out as part of the routine process for the preparation of secondary legislation for consideration and scrutiny by the Justice Committee and the Assembly and will include consultation with relevant stakeholders, including the NIHRC.

### **Management of sex offenders**

NIHRC considered that some of their concerns about the draft provision in the Bill relating to Sexual Harm Prevention Orders (SHPOs) and Sexual Risk Orders (SROs) had not been fully addressed. The Commission is concerned that the draft provision does not identify how the Government plans to monitor the movement of offenders from one jurisdiction to another. It also highlighted the importance of addressing the practical application of the orders as well as ensuring that their operational function is as effective as possible and flagged the importance of ensuring that how offenders' movements are monitored between jurisdictions is compliant with international human rights standards.

As previously advised the proposals in the Bill seek to amend the Sexual Offences Act 2003 (the 2003 Act) to enable the UK- wide enforcement and manageability of all civil prevention orders for sex offenders, across the UK jurisdictions as a consequence of proposed SHPO and SRO introduction planned by Scotland.

The SHPO and SRO were originally introduced in England and Wales in 2015 and replace existing UK-wide civil preventative orders previously made under the 2003 Act – the Sexual Offences Prevention Order (SOPO), the Foreign Travel Order (FTO) and the Risk of Sexual Harm Order (RoSHO). The SHPO replaces the SOPO and the FTO and is largely a consolidation of these Orders, combining measures to address risk within and outside the UK. The SRO replaces the RoSHO and addresses risk from non-convicted sources. Sex offenders in Northern Ireland will continue to be managed under the SOPO, the FTO and the RoSHO.

The provision proposed in the Bill will enhance the effectiveness of the orders as a consequence of changes made to orders in Scotland, to ensure that respective courts in each UK jurisdiction can tailor conditions set (regardless of where the order was made) so that it better suits the local context and individual risk presented. It also provides that any breach can be dealt with locally without the need for the offender to be returned to the jurisdiction where their original order was made. The provision being made is not a

departure from policy intent or established management processes, rather it comprises the necessary adjustment to the law to enable the efficient management of orders, given changes proposed for Scotland.

To manage offenders under existing orders, effective risk management processes agreed between police forces and probation services across the UK are already in place to ensure that offenders who move between UK jurisdictions are effectively identified and managed on transfer. Management tools include IT platforms such as the Violent and Sex Offender Register (ViSOR), the Criminal History System (CHS) and the Police National Computer (PNC). These are supported by sex offender notification requirements which require an offender to notify the police of any change of address or travel within the UK, and by established and effective communication and administrative systems between the jurisdictions.

Offenders transferring between jurisdictions under the new Orders will be similarly identified and managed with no new systems required. Current systems are compliant with international human rights standards.

### **General**

There may be a further provision relating to Northern Ireland to be included in the LCM, in addition to those outlined in the letter of 16 June. This provision relates to the use of audio and visual links in criminal proceedings. If agreement is secured to include this provision, we would have to undertake the process of seeking Executive approval and then seek approval from the Assembly for all the proposed provisions.

I hope the Committee finds this information helpful.

Yours sincerely

FROM THE OFFICE OF THE JUSTICE  
MINISTER



Department of  
**Justice**

An Roinn Dí agus Cirt

Männystrie O tha Laa

[www.justice-ni.gov.uk](http://www.justice-ni.gov.uk)

**CLAIRE MCCORMICK DALO**