

LEGISLATIVE CONSENT MEMORANDUM

THE POLICE, CRIME, SENTENCING AND COURTS BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Justice, is:

“That this Assembly agrees to the extension to Northern Ireland of a number of provisions within the Police, Crime, Sentencing and Courts Bill relating to the Crime (Overseas Production Orders) Act, the management of sex offenders, the National Driver Offender Retraining Scheme (NDORS), application of S29 of the Petty Sessions (Ireland) Act 1851 to the provisions in the Bill enabling a judge in England and Wales to make an order authorising the police to obtain information about the location of human remains outside of a criminal investigation, and the application of an amendment to the Proceeds of Crime Act 2002 to Northern Ireland to bring electronic money and payment institutions within the scope of account freezing and asset forfeiture powers in Northern Ireland.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Police, Crime, Sentencing and Courts Bill was introduced in the House of Commons on 9 March 2021. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/2839>

Summary of the Bill and its policy objectives

3. The Bill contains a number of provisions, mostly relating to England and Wales. There are matters that are proposed to extend to Northern Ireland that engage the LCM process. The Bill includes a number of amendments to address practical issues arising from the implementation in Great Britain of the Crime (Overseas Production Orders) Act 2019, which are intended to provide a more streamlined process for obtaining electronic data from other jurisdictions for UK criminal investigations. The Bill will also provide for cross-jurisdictional enforcement of sexual offences orders and put the National Driver Offender Retraining Scheme (NDORS) on a statutory basis, with a power to levy fees and use funds to invest in road safety

initiatives. In addition, the Bill provides for the execution of search warrants obtained in England and Wales on foot of a court order to access special procedure material that may relate to the location of human remains. The Bill extends an amendment to the Proceeds of Crime Act 2002 to Northern Ireland to bring electronic money and payment institutions within the scope of asset freezing and forfeiture powers.

Provisions which deal with a Devolution Matter

4. The provisions amend powers in the existing COPO Act (which commenced in NI in February 2021), provide for the enforcement of sexual offences orders in NI, create new powers to make regulations and charge fees in relation to NDORS, and provide for the execution in Northern Ireland of search warrants obtained in England and Wales on foot of a new power to seek an order to access special procedure material in cases where human remains have been located but it is not possible to bring anyone to justice. The Bill extends an amendment to the Proceeds of Crime Act 2002 to Northern Ireland to bring electronic money and payment institutions within the scope of asset freezing and forfeiture powers.
5. The provisions will also extend to Scotland and an LCM is being sought.

Reasons for making the Provisions

6. The amendments to the COPO Act will address issues identified by the Home Office arising from implementation and better enable the Act to achieve its objective of streamlining the process for gathering electronic information for use in criminal investigations from other jurisdictions. This will ensure Northern Ireland is on the same footing as the rest of the UK. The amendments will:
 - a. Permit the obtaining of communications data (information on who sent an email, when and to whom it was sent) in addition to data stored electronically only where it is associated or linked with the stored electronic content sought. This will provide the necessary evidential value to the material sought;
 - b. Confer on the Home Secretary and the Lord Advocate the flexibility to delegate tasks related to the serving of an OPO to an appropriate body (for example to a body that has the required technical and secure capability to transmit data of this kind).

- c. Make a missed consequential amendment to the provisions specifying the relevant evidential test needed to be applied by the judge when approving an OPO.
7. The provisions relating to the management of sex offenders will ensure that orders made in Scotland can be enforced in Northern Ireland. Without this, there is a risk that sex offenders in Scotland could move to Northern Ireland to evade any prohibitions imposed and any breach would not constitute a criminal offence. The Bill will also address an existing gap by enabling orders made in one part of the UK to be varied in another part of the UK to provide for more effective management of sex offenders who move from one jurisdiction to another.
8. The provisions relating to NDORS will provide a clear statutory basis for charging fees for such courses, in line with other parts of the UK. It will also enable excess funds raised to be retained in NI for investment in road safety initiatives.
9. New provisions will provide new powers for police in England and Wales to apply to the courts for an order to access special procedure material that may relate to the location of human remains. These provisions apply to England and Wales only. However, they also provide conditions under which police can apply to the courts for access to special procedure material or excluded material under these new powers, mirroring Schedule 1 to PACE, which provides similar conditions for search warrants applied for under section 8 of PACE. The measures include provisions for orders issued in England and Wales to be executed in Scotland and Northern Ireland, under the Summary Jurisdiction (Process) Act 1881 and Petty Sessions (Ireland) Act 1851 respectively, similar to the existing provisions in PACE.
10. Essentially the Home Office is seeking to ensure consistency across jurisdictions and replicate the existing provisions contained within PACE. Existing powers in the Police and Criminal Evidence Act 1984 (“PACE”) to obtain search warrants to enter premises and/or seize evidence are limited to circumstances in which there is reason to believe an indictable offence has been committed and there is potential to charge an individual or individuals with said offence. The new measures will allow the police to apply to the courts for a search warrant to seize evidence relating to the location of human remains in situations where an offence has been committed but it is not possible to bring anyone to justice, for example because suspects are deceased, or where there is no reason to believe an offence has been committed.

11. In effect, this ensures that a warrant or order issued by a court in England or Wales under these powers and endorsed by a court in Northern Ireland may be executed in Northern Ireland. Section 29 of the 1851 Act provides equivalent provisions between England, Wales and Northern Ireland.
12. The Home Office anticipate that this power will be used very rarely. It is, while unlikely, conceivable that an order could be sought where a person has died in England or Wales but an individual living in another part of the UK is thought to hold information pertaining to the location of relevant human remains. The extension of the legislation is primarily to avoid a situation where the tests under these provisions would be met but a person's location within the UK prevents the warrant or order being effected.
13. The Bill extends an amendment to the Proceeds of Crime Act 2002, already in force in England and Wales, to Northern Ireland. The amendment will bring electronic money and payment institutions (e.g. PayPal) within the scope of asset freezing and forfeiture powers. This will address a gap in existing powers to tackle serious and organised crime and ensure that such assets are not beyond the reach of law enforcement bodies in the conduct of criminal investigations.

Reasons for utilizing the Bill rather than an Act of the Assembly

14. Ordinarily, these provisions would be legislated for through the Northern Ireland Assembly. However, given that the Bill has already been introduced in the UK Parliament, powers relate to legislation that applies across the UK, and the time constraints in the current mandate, it would prove more practical to bring these provisions into operation via the Westminster Bill and ensure parity with the rest of the UK.

Consultation

15. Consultation was carried out with relevant NI Departments and statutory agencies, including the Policing Board and PSNI.

Human Rights and Equality

16. No human rights or equality issues have been identified.

Financial Implications

17. No expenditure implications have been identified.

Summary of Regulatory Impact

18. There would not be significant impact on the business or voluntary sectors.

Engagement to date with the Committee for Justice

19. An oral briefing was provided to the Justice Committee on 14 January 2021.

Conclusion

20. The view of the Minister for Justice is that the Assembly should support the provisions of the Bill that deal with a devolution matter.

Department of Justice

12 October 2021