



Christine Darrah
Clerk to the Committee for Justice
Room 242,
Parliament Buildings
Stormont
Belfast
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Date: 08 April 2021

Dear Christine

Proposed Legislative Consent Motion – Police, Crime, Sentencing and Courts Bill

Thank you for your letter of 10 March 2021 seeking the Attorney General's view on the provisions within the above Bill on which it would be possible for the Assembly to legislate. In particular, you asked for a view on the compatibility of the provisions with the European Convention on Human Rights. The Attorney has asked me to share the comments below with you.

As you are aware, a number of the relevant provisions confer new powers on those exercising public functions, such as police officers (to extract electronic information) or courts (to issue warrants/orders (location of human remains) or to vary the order of another court (sexual offenders)) or the Secretary of State or Department of Justice (to make regulations). In these circumstances section 6 of the Human Rights Act 1998, which provides that it is unlawful to act in a way which is incompatible with a Convention right, will apply to the exercise of powers under these provisions.

It may be helpful to consider the provisions on extraction of information from mobile devices, by way of example. A police officer wishing to rely on the agreement of an adult (particularly, if not a parent or guardian) in order to extract data from a device used by a child would also need to consider the rights of the child (that child may be expressing objection). This would also apply as regards adults deemed to lack the capacity to agree to hand over a device (the Bill enables others to 'agree' to extraction). As the Mental Capacity Act (Northern Ireland) 2016 has not been fully commenced, it is all the more

important that a police officer proposing to rely on agreement by a third party considers how that agreement reflects the wishes and feelings of the person who lacks capacity. Consideration would also need to be given to the Convention rights of third parties (friends, family members, for example) whose information may be stored in text messages or emails on the device which is being accessed. Usefully, the Bill provides for a Code of Practice. The Department of Justice will be consulted on the content. Consideration in the Code of how powers can be exercised compatibly with the Convention may be helpful.

As you know, the Attorney is empowered to issue guidance to criminal justice organisations in Northern Ireland on the exercise of their functions in accordance with international human rights standards. Should any concerns arise in practice then this can be considered.

If any particular clause of the Bill is causing concern then please feel free to seek the Attorney's view.

Yours sincerely

PP

Maura McCallion
Head of Division
Office of Attorney General for Northern Ireland