



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Policing and Crime Bill Legislative
Consent Motion: Department of Justice

10 November 2016

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mrs Pam Cameron (Deputy Chairperson)
Mr Alex Attwood
Ms Clare Bailey
Mr Doug Beattie
Mr Roy Beggs
Ms Michaela Boyle
Mr Sammy Douglas
Mr Declan Kearney
Mr Trevor Lunn
Mr Pat Sheehan

Witnesses:

Ms Rosemary Crawford	Department of Justice
Mr Gary Dodds	Department of Justice
Mr Michael Meehan	Department of Justice
Ms Amanda Patterson	Department of Justice

The Chairperson (Mr Frew): From the Department of Justice (DOJ), I welcome Rosemary Crawford, the deputy director of the policing policy and strategy division; Mr Michael Meehan and Gary Dodds, from the policing policy and strategy division; and Amanda Patterson, the head of the criminal policy branch. I advise the witnesses that the session will be reported by Hansard, and the transcript will be published on the Committee web page. I invite Rosemary to lead off with a presentation.

Ms Rosemary Crawford (Department of Justice): Thank you, Chairman. I am grateful for the opportunity to update the Committee on the provisions currently contained in the proposed legislative consent motion (LCM), which seeks to extend to Northern Ireland a number of provisions in the Policing and Crime Bill. I am conscious that, as the Chairperson has just indicated, there have been a number of changes to the proposed LCM, including some since the Committee was briefed by officials on 15 September, and, more recently, to reflect developments as the Bill progressed through the House of Lords. The Department's 7 November briefing paper detailed the various changes and set out the current position. A copy of the revised LCM, which was laid in the Assembly Business Office on 7 November, is, for ease of reference, attached to the briefing paper. I am also very conscious of the tight timescales for publishing the Committee's report. Officials are, therefore, keen to answer any remaining questions that members may have.

With your permission, Mr Chairman, I want to give a brief overview of what is in the proposed LCM and what is now out, and then seek to provide any further clarification that may be necessary.

Members will already have met the colleagues who join me: Michael Meehan, who leads on issues regarding police oversight; Gary Dodds, who leads on issues relating to police powers; and Amanda Patterson, who will lead on any questions regarding the recently inserted provisions relating to the pardons for convictions of abolished homosexual offences.

As it stands, the LCM seeks provisions on four areas: maritime enforcement powers excluding hot pursuit; anonymity for victims of forced marriage; UK cross-jurisdictional arrest powers; and pardons for convictions of abolished homosexual offences. I will turn first to maritime enforcement powers, and there are two key aspects that I wish to draw to members' attention. First, in the initial consideration of this aspect, the proposal was simply to seek the extension of maritime powers for officers from England, Wales and Scotland so that they could use such powers in the event that they were to enter into Northern Ireland territorial waters in hot pursuit circumstances. At that stage, it had not been intended that the wider maritime powers would be extended to the PSNI as the initial view of the police was that there was no pressing operational need. However, following the Committee's helpful intervention and further engagement with the police, it was agreed that reciprocal powers should be sought for the PSNI. These powers are, therefore, now included in the LCM. As a result, we are seeking the Assembly's consent to extend to the PSNI maritime powers that will enable them to seek to prevent, detect, investigate and/or prosecute offences committed on vessels in Northern Ireland territorial waters. The PSNI will be able to board, divert and/or detain vessels and search for and obtain information.

The second issue of note relates specifically to hot pursuit. Mindful of the Committee's conditional approval in this regard, officials engaged with the Policing Board to discuss the proposed oversight and accountability arrangements. While some board members were supportive, the board was unable to reach an agreed position and wanted further time to consider. Despite protracted engagement, it did not prove possible to reach agreement in relation to the oversight of Police Scotland officers, were they to enter Northern Ireland waters in hot pursuit. For these reasons, the provisions relating to hot pursuit in both directions have been removed from the LCM. That said, these are powers that the Department would like to see in legislation. The intention is, therefore, to continue to engage with stakeholders, seek to find a way through current concerns and identify a legislative vehicle to introduce hot pursuit provisions.

The Committee previously considered and approved the extension to Northern Ireland of powers on three other areas in the Policing and Crime Bill: anonymity for victims of forced marriage; UK cross-jurisdictional arrest powers; and biometric retention for convictions outside Northern Ireland. There has been no change to the first two issues, but the position has changed on biometric retention.

Given the need to secure Executive approval before laying the LCM, officials circulated a draft Executive paper in advance of the Executive meeting on 27 October. Following feedback on the draft, the final paper tabled and ultimately approved by the Executive did not include provisions relating to biometric retention. Those provisions are, therefore, no longer included.

The final aspect of the proposed LCM relates to new provisions, which, I appreciate, the Committee has not yet had an opportunity to consider. They relate to amendments to the Bill, tabled just a matter of days ago, which would provide pardons for convictions relating to now-abolished homosexual offences. As members will be aware from the Minister's recent statements, she is keen to bring forward these proposals, which would pardon anyone convicted of homosexual offences where the activity is no longer criminal. The Minister is keen to take this opportunity to ensure that there is parity in these issues between Northern Ireland and England and Wales. The Department has, therefore, sought to progress the issue to allow it to be considered within the existing motion. Executive approval for the amended LCM was received on 7 November.

I hope that this overview has been helpful. We are happy to provide any further clarification.

The Chairperson (Mr Frew): Thank you very much, Rosemary, for your presentation and for giving us a second briefing. I really appreciate that because time is moving on, and we are always pressured. However, what I have to say to you I do not say lightly, because I am not that type of person: this has been an absolute shambles from the word go. This LCM or, should I say, these LCMs have been an absolute disgrace. I do not think that I have ever seen a performance like this in any Department in my time as an MLA. That is saying something because I was on the Committee for Enterprise, Trade and Investment, where I had to deal with the energy branch, and I was also on the Public Accounts Committee (PAC), where I had to deal with a lot of issues where things had gone wrong. I must say that I am deeply disappointed and angry at the performance of the Department in this regard.

You brought the LCMs to us at the very start, and it was clear that, to give those constabularies the power to come into our waters, you would have had to address both the Police Ombudsman and the Policing Board. You neglected to do that on both occasions. You surely knew that this Committee would have asked about the accountability mechanisms. Have we not been through this, time over time? You waited, until a matter of weeks ago, to present this to the Policing Board, and then you are surprised that it takes more time to deliberate over it, to the point at which you actually have to remove hot pursuit powers from the LCM, which is the very thing that this Committee is crying out for. It is obvious: why would you give constabularies in England, Scotland and Wales the powers of hot pursuit and not reciprocate by giving the PSNI the same powers, considering that it had just purchased two boats last year? Communication with the PSNI has been shambolic and diabolical. The Department told us that the PSNI did not require those powers; the PSNI told us that it does. Where was the breakdown in communication between the Department of Justice and the PSNI, which is a massive element in your Department? Is that not a scary thought for us, sitting on the Committee? These are all obvious things that should be happening behind the scenes before you even present an LCM to the Committee. You failed in every single one of them. We are going to get an oral briefing on every single LCM that comes before the Committee. The way in which the Department has acted not only to the Committee but to the PSNI, the Policing Board, the Police Ombudsman, the Home Office, Scotland and Wales is an absolute disgrace. How must we look across these islands when you see the shambolic nature of the Department bringing forward what should be a simple mechanism to replicate law from one part of the United Kingdom in another?

Where do I start with my questions? It has been absolutely shambolic. I will start with this one: why did you not know that we would have asked for the PSNI to be given the same powers of hot pursuit? Why did you not realise that we would ask questions around accountability?

Ms Crawford: Chair, I will say something before I answer your specific questions. You asked whether this was a shambles. The truth is that we could have done better — absolutely. We recognise in the Minister's letter to the Committee that we could have done better. It is absolutely no excuse — I do not want to attempt to make an excuse — but we were driven in part by the fact that we had to deal with the timescale for the Policing and Crime Bill, which was outwith our control.

The Chairperson (Mr Frew): No, it was not. The Policing and Crime Bill has been on the books since February. You went to the Policing Board in October.

Ms Crawford: We sought to address initial issues around it. We were aware that there would be considerable concern about oversight. We have been engaging at length with the Home Office and the Scotland Office. We were very clear that it was the position of the Assembly that oversight by the Office of the Police Ombudsman for Northern Ireland (OPONI) had to have primacy. That was vital. That was the issue that we put a great deal of time and effort into trying to resolve. I think that it is fair to say — as I said, we stated this in the letter to the Committee — that we were distracted by trying to seek to resolve that. We engaged at length with OPONI, which was content with the proposals that we were able to present on oversight. We were distracted, and we omitted to engage sooner with the Policing Board. For that, I apologise.

The Chairperson (Mr Frew): Let us be clear: this came before the Committee as three LCMs. I think that we all realise why. It is now in one LCM before us today. You knew that there were issues. What is the relationship like now with the Home Office? Where does it stand on hot pursuit?

Ms Crawford: As I said, we have had very productive engagement at length with the Home Office. It, like us, was keen to establish the provisions for hot pursuit. We have committed to continuing to engage with it. As I said, we know that we need to continue to pursue this, and we will engage with the Home Office. Its position on hot pursuit was that it did not make sense for powers of hot pursuit to be sought one way rather than in both directions. Agreeing the oversight in terms of Police Scotland and agreeing the accountability arrangements with the board prevented us from getting to that point, but that does not mean that we intend to stop and leave it there. We will continue to engage with the Home Office and the Scottish Government. We will continue to engage with the board to try to get this resolved and bring forward a legislative vehicle to give it effect.

The Chairperson (Mr Frew): I appreciate the fact that we are still pursuing hot pursuit powers through a legislative vehicle, but there would have been none better than an LCM. Why do we still not have hot pursuit powers in this LCM?

Ms Crawford: For us to have been able to bring that forward, we would have needed to have complete agreement on the oversight arrangements. The arrangements that we developed on that, which we presented to the Policing Board, have been agreed entirely with the Police Ombudsman; he was entirely content with what we had proposed. The oversight issue did not get closed out because there was still a concern about Police Scotland. The relationship is still extremely good; Police Scotland would like to be able to agree this with us. The issue it had was that it was a bit of an anomaly for it, in that, the oversight arrangements that we need for Northern Ireland to make it work would in effect mean that, when Police Scotland officers are in Northern Ireland territorial waters, they would be subject to greater scrutiny than would be the case if they were in Scottish waters or on Scottish land. That was the issue that Police Scotland had. It is an issue of agreeing that with its stakeholders.

The Chairperson (Mr Frew): If it was OK to leave the PSNI out of the original hot pursuit powers, why is not OK at this point to leave Police Scotland out of the hot pursuit powers, instead allowing that relationship to develop through a legislative model and still retain the hot pursuit powers in this LCM?

Ms Crawford: From our conversations with the Home Office, we concluded that it would make much better sense — we will continue to pursue this — to have all the provisions for that area in one place rather than having a hotchpotch arrangement. We agreed that that would be important to the police forces, the oversight bodies in the different jurisdictions, individual officers and, indeed, the public in each area to ensure that there was absolute clarity.

The Chairperson (Mr Frew): Who will bring the legislative vehicle forward?

Ms Crawford: We will continue to pursue it. As I said, the Home Office still wants this and is still engaged and working with us on it. I think that the preferable vehicle would be for the Home Office to take it through and for us to arrange an LCM here and to do it in parallel. We will be looking to bring it forward at the earliest opportunity.

The Chairperson (Mr Frew): How embarrassing. You are talking about having a policing and crime (No. 2) Bill because of our performance in Northern Ireland. That is really embarrassing. That is basically what you are saying: you are asking the Home Office to go over this again in a policing and crime (No. 2) Bill. That is what we are down to.

Ms Crawford: I am hopeful that we will not necessarily need to wait until there is another detailed, comprehensive Bill. There might be another opportunity. If we can find something that Westminster is progressing in which this remains within scope, we will try to do it that way.

The Chairperson (Mr Frew): It really does beggar belief. I am not the type of person to be hard on officials who are doing their work, but I am flabbergasted at the performance of the Department. It embarrasses me when we look at Scotland, England and the Home Office and how it has got to this point. At the very first meeting at which we brought this up, we outlined all the issues in a row, yet we are still here. I know that we have run out of time, and we are sitting here now without hot pursuit powers. I am asking this: what does it mean that we do not have hot pursuit powers?

Ms Crawford: What we are proposing in this LCM will give the police new maritime enforcement powers that are specific to the maritime context, but that does not mean that such powers are not currently in operation on the water — they are, drawing on existing legislation. What is being proposed in this LCM, however, is that the police forces in each jurisdiction will have these powers, so they will operate across NI waters. The only issue is that, when a pursuing force crosses territorial boundaries, it cannot progress into those waters. Given that we are now bringing forward wider powers for the PSNI, if it were the case that one of the English forces were pursuing a vehicle that crossed into NI territorial waters, the PSNI would then have the powers to pick up that case and deal with it, so there will be coverage. There are loads of powers that the police currently rely on: the Police and Criminal Evidence (PACE) Act, justice and security legislation and the Marine and Coastal Access Act 2009, and there are wildlife orders for anti-poaching operations. Various bits of legislation give the PSNI powers when it is on NI waters. The view of the police is that it would enable them to enforce issues on the waters more efficiently and effectively if they had wider maritime enforcement powers, so they are grateful for that. As for hot pursuit, it simply means that different forces cannot cross boundaries, but all the waters will still be policed.

The Chairperson (Mr Frew): When the Department engages with the PSNI, who does it engage with and at what level?

Ms Crawford: I am not sure exactly at what level of the PSNI that engagement was with, but it would have been with the usual contact whom we went to when we were starting to explore such issues. The view at that time, which was explained to us, was that there was no pressing operational need for these powers for the reasons that I explained. The PSNI can already draw on different things.

The Chairperson (Mr Frew): May I be so bold as to correct you? At the start, it was that the police did not have the capacity to use these powers.

Ms Crawford: I think, in fairness, given the feedback that we got from the PSNI initially — I am not trying to lay the blame with the PSNI in any shape or form — we should have gone back in at a more senior level to make sure that that was the strategic decision that was being taken for the organisation. The view was that, from an operational level and in view of capacity as part of that, there was no pressing need. The reason why the PSNI is content to have wider maritime enforcement powers now is because it can see how things would operate more efficiently and effectively.

The Chairperson (Mr Frew): Why would you not legislate for the powers anyway, even if you did not have a pressing need or a capability, when other parts of the United Kingdom are getting the powers?

Ms Crawford: In essence, that is what we are doing now. This LCM will have those powers for the PSNI.

The Chairperson (Mr Frew): I do not think that you answered the question about who you go to in the PSNI on legislation issues.

Mr Gary Dodds (Department of Justice): Generally, if a policy proposal arrives, in this case from the Home Office — it was a request as to whether these powers should be extended to Northern Ireland in the Policing and Crime Bill, which would have required an LCM — the normal process is that we contact the police lead in whatever area in the PSNI that policy proposal lies. In this case, it would have been the officer responsible for maritime capabilities in the PSNI.

The Chairperson (Mr Frew): Is it correct that, at that point, the person responsible for maritime capabilities then told you that the PSNI had limited maritime capabilities and that there was no pressing need for additional powers?

Mr Dodds: That is correct, yes.

Ms Crawford: In fairness, just to clarify, it was that there was no pressing operational need. I fully accept that, in those circumstances, we should have engaged at a higher level because there could have been a more strategic conversation about what best met the needs of the PSNI.

The Chairperson (Mr Frew): The next time we look at an LCM, who will you contact in the PSNI?

Ms Crawford: Again, it will be whoever has the main responsibility for that policy area, but we will do it at a more senior level. The proposals that we brought forward on oversight, accountability and everything else were all agreed at assistant chief constable (ACC) level.

The Chairperson (Mr Frew): I do not mean an LCM on specific hot pursuit powers; I mean any legislation, either from the Department of Justice, through an LCM or from the Home Office. Where is the infrastructure in place — a robust mechanism — to ensure that this does not happen again?

Ms Crawford: We have really good working relationships with the PSNI. When we bring anything forward, we will ensure that we engage at the proper level, be that at ACC, Deputy Chief Constable level or whatever.

Mr Dodds: We will now also do it through the PSNI's command secretariat.

Ms Crawford: Gary is right to remind me. The Minister's letter to the Committee stated that lessons have been learned from this — absolutely. We have a mechanism that was introduced immediately

that any requests that we put through for information, rather than relying on our own networks and contacts, will go through the PSNI's command secretariat.

The Chairperson (Mr Frew): Do they have someone in the PSNI who looks at legislation as it comes in? Do they have someone who is geared up to do that, with the expertise and responsibility to say what is good and bad legislation from the point of view of policing?

Mr Dodds: Ordinarily — it was common in this particular instance — when policy proposals are brought, sometimes from the Home Office, the draft legislation has not been drafted. Sometimes it is difficult to present the detail of the legislation, and it will only be a policy proposal. In this instance, we did not have the legislation to share, but we did have the policy proposal and the policy intent. The question was whether it needed to be extended to Northern Ireland. As Rosemary said, the initial approach was that there was not a pressing operational need. I think that I explained at the 15 September meeting that the Department would generally not bring an LCM if there was not sufficient justification for doing so. Generally, these things are legislated through the Assembly. That was the basis on which we proceeded. As Rosemary said, we have learned lessons from that. We certainly have learned lessons.

The Chairperson (Mr Frew): I will leave it at that. Obviously, it would be remiss of us not to discuss the additional aspect of the LCM. I understand why it is only coming now. I understand the process; it is an amendment in the House of Lords, and I assume that you can really only legislate through an LCM for the exact wording of an amendment. I suppose what I am asking is whether we are looking at doing something of a similar nature with regards to pardons for heterosexual people that were caught up in something that was specific to Northern Ireland, which was the change to the age of consent.

Ms Amanda Patterson (Department of Justice): Maybe I can answer that one for you, Chairman. You are more or less right in that the LCM would ask the Assembly to simply replicate the provisions that are already in the Protection of Freedoms Act 2012, plus the new amendments that introduce actual pardons for abolished homosexual offences. I think that the timing would make it very difficult for the Department to look to do anything other than that simple replication of powers, but I do not think that it closes the door if the Executive or the Assembly wish to look at further parts of that in the future. It is a wider policy issue that would need to be looked at a lot more. The policy intent and focus of the amendments to the Bill at this stage is to right what is widely perceived as a historical injustice to a particular group of people. That is where the drive and focus have been and what the 2012 Act has done in the past. It would basically look at wider issues about the decriminalisation of particular activities, be they sexual or otherwise, and whether there are injustices that need to be righted by the use of retrospective legislation on pardons. It is a wider policy issue, and we are past the point of doing that in this Bill.

The Chairperson (Mr Frew): Within this model.

Ms Patterson: Yes.

The Chairperson (Mr Frew): It is interesting that you have said that it is geared toward a section of the community, which it is, plainly and clearly. Does that not then raise issues for us under section 75?

Ms Patterson: We are aware that there are section 75 issues here, but in this particular case the focus of the Department is on righting a historical wrong. There is the bigger issue that consensual homosexual acts were completely criminalised for a long time. The intention is to right the balance at this time. As you say, there is nothing to prevent the Executive and Assembly from looking at other issues.

The Chairperson (Mr Frew): Is the Department of Justice minded to look at the wider aspect of — I need to choose my words carefully, as I want to be sensitive about the thing — what would have been conceived as sexual crime? The age of consent changed in Northern Ireland from 17 to 16. I think that is specific to Northern Ireland.

Ms Patterson: It is specific to Northern Ireland, yes.

The Chairperson (Mr Frew): That could create an anomaly. The principle is the same, albeit it is a different section of the community. There is unlawful carnal knowledge. There are two or three laws there that could be reviewed by the Department of Justice to see how many people were involved and whether they deserve recognition or the same treatment.

Ms Patterson: I understand that, but I cannot give you any commitment or reassurance on behalf of the Department today, because, in the time that we have had, the Minister has not looked any further than this point. We are taking this opportunity to do something that would take considerable time if we did not do it now, but there is not the time to do anything else at this stage.

The Chairperson (Mr Frew): Not at this stage. I am keen to see if the Department is minded to do a piece of work on the numbers.

Ms Patterson: All I can say is that I cannot give you that commitment, because the Minister has not asked me to do that, but we could certainly write to the Committee when we have taken the Minister's mind.

Mr Lunn: Just on that, before we finish, I take it that the current suggestion includes posthumous pardons.

Ms Patterson: It does, yes.

Mr Lunn: Sorry, I will have to go back to hot pursuit now. It is a simple question. I am not expecting you to read the mind of the Scottish Government, because, frankly, I do not understand it myself, but if Scottish police officers or, for that matter, NCA officers operate here at the moment, even to the extent of delivering someone into custody, are they answerable to the Police Ombudsman while they are on Northern Irish soil?

Mr Michael Meehan (Department of Justice): Officers from Police Scotland would operate in Northern Ireland under the mutual aid arrangements, and the legislation is the 1998 Act. They have agreements with the home forces that enable the ombudsman to have oversight because they are invited by the Chief Constable to supplement and support PSNI officers. An officer from Scotland operating in Northern Ireland at the invitation and under the direction and control of the Chief Constable of the PSNI is subject to the Police Ombudsman.

Mr Lunn: It does not sound to me a mile away from the situation that we are talking about. You have officers from what you would almost think is a foreign power operating in our territorial waters or on our soil, yet we have this disagreement. I do not understand what the Scottish Government are up to here.

Ms Crawford: The Scottish Government are very keen to work with us on this; they want to find a solution. Essentially it is an issue of stakeholder management for them and getting agreement in place there, because some of the key players — basically, Scottish police officers and their representative bodies or staff associations — have concerns. It is about trying to manage that. However, the Scottish Government are keen to work with us to resolve this.

Mr Meehan: Perhaps I should say that the only recent instances of mutual aid officers from GB I recall or am aware of were from England and Wales. I am not aware that Scottish officers have been here recently.

Mr Lunn: I do sometimes wonder, Chair — it is not a question — what is the meaning of the word "United" in United Kingdom and why we have separate territorial waters for the United Kingdom amongst the four so-called countries involved. That is not a question; it is getting it off my chest.

The Chairperson (Mr Frew): You have ignited Declan. He has put his hand up straight away on that one.

Mr Douglas: I have three quick questions, mostly for clarification. First, do the pardons for convictions include cautions?

Ms Patterson: They will do.

Mr Douglas: Secondly, the pardons will be for convictions for abolished homosexual offences. I assume that that is a legal term. Certainly, having had discussions with the LGBT community, I know that they would see the term "homosexuality" as offensive to them. I take it that that is the legal term in the Bill.

Ms Patterson: No, it will not be in the Bill. That is probably just an easier way to describe it.

Mr Douglas: Thirdly, it talks here about the UK Government's having indicated support for late amendments to provide statutory pardons for persons with convictions in England and Wales, and goes on to say:

"including military convictions under Service Law".

Maybe Doug might be able to answer this —

Mr Beattie: What are you saying? *[Laughter.]*

Mr Douglas: As regards service law, it talks about applying to England and Wales. Is it the same in Northern Ireland?

Ms Patterson: I do not think so. I think that the provisions will apply. You would not have to make separate provisions for Northern Ireland; they will apply service-wide.

Mr Kearney: I have a very quick question, Rosemary, going back to maritime enforcement powers and the issue of the Policing Board. I echo — I will not rehearse — everything that Paul said on that matter. It appeared as though we were on a see-saw for a period of successive meetings, where this issue was just coming backwards and forwards and we did not seem to be getting anywhere fast. In your comment about now having an institutional arrangement for engagement with PSNI, I picked up your comment about us having contacts, which suggested to me that it was a very casual arrangement and that it appeared to be on the basis of who you knew. If that is not the case, I will be glad to hear it, but there is now clearly a structural or institutional entry point for communication on these matters with the PSNI. I raised the issue of communication with the PSNI, and also with the Policing Board, with the Minister herself. She was very surprised that the appropriate level of communication was not institutionalised in your practice with the Policing Board. How have you remedied that? What now is the entry point, and can we be reassured that in fact, for future matters like this, a systematic approach will be taken to engagement with the Policing Board to ensure that it is part of the loop and that, in turn, we are reassured that its accountability role is being entrenched and supported by you?

Ms Crawford: Certainly, through the Chair, I hope that I did not give any suggestion that the engagement between the Department and the PSNI is on any kind of casual basis and based just on who we know. It really has evolved over time. We build relationships with individuals as we deal with them on specific issues. The normal course of events —

The Chairperson (Mr Frew): Just on that, I will emphasise that it sounded as though you had phoned a call centre.

Ms Crawford: No, absolutely not.

The Chairperson (Mr Frew): That is how bad it was.

Ms Crawford: Absolutely not, Chair. I can assure you that that was not the case; it was people in my division going directly to individuals who they knew in the proper policy area and taking their views on policy proposals that were being brought forward. The normal course of events — and this is what we have reinforced as a result of this experience — is that every communication goes through command secretariat. In addition to that, senior officials in the Department engage with senior members of the police regularly. We will ensure that all engagement goes through command secretariat. It will primarily be their decision as to whether it needs to be escalated within their organisation to higher levels for consideration. We have regular engagement with the Policing Board. My division has the sponsorship relationship with the Policing Board, so there is regular engagement on all of the corporate issues that you would expect through that. As I said earlier, I put my hand up that it was genuinely an oversight on this occasion about addressing the accountability issues, simply because

we were engaged in such protracted conversations with the Home Office around trying to agree oversight, and with the Police Ombudsman, and trying to square that off. It was simply an error on our part, for which, as I have said, I apologise.

The Chairperson (Mr Frew): To be clear, who is your contact in the Policing Board? What level is the contact at? Who do you go to?

Ms Crawford: It is the chief executive.

The Chairperson (Mr Frew): The chief executive of the Policing Board.

Ms Crawford: Yes.

The Chairperson (Mr Frew): And then the command —

Ms Crawford: The command secretariat in the PSNI.

The Chairperson (Mr Frew): And then, of course, do you go directly to the Police Ombudsman?

Mr Meehan: We go either to the Police Ombudsman, the chief executive or, if it is a legislative matter, the director of legal services.

Ms Bailey: Will the pardons that are coming for the abolished offences also come with an apology from either Westminster or the Executive Office here?

Ms Patterson: No, that is not part of the provisions that are being put forward in the Lords at the minute.

Mr Beggs: I share the Chair's frustration at the way that this legislative consent motion has been handled. Originally, I thought that it was a simple matter of getting reciprocal powers, but a whole series of failures had occurred. You said that we will not face this again because you have put in new systems. The two failings occurred because of informal discussions, and, secondly, we were advised by, I think, an Assistant Chief Constable that it was not at the senior level. I want to know, if not with which individual person, at what level, rank or position you will be engaging with the police in future when consulting on legislation. Do you accept that, because legislation is so important, it is important that there is formal communication in writing and that there is no room for doubt or ambiguity?

Ms Crawford: Absolutely, Mr Beggs. I do accept that point. I have apologised for this before, and it absolutely could have been handled better. We have learned lessons. You mentioned new systems. What we are doing is reinforcing the systems that should have operated. Our contact with the PSNI should be formally through the command secretariat. It is down to knowing the individuals who are dealing with issues and knowing who to go to. Had there been any concern or whatever, we should have followed that up in writing and raised it.

On the question of what level we will engage with on legislation, which, as you quite rightly say, is vitally important that we get right, we will continue to go through command secretariat, and it will be for the organisation to decide at what level it needs to escalate that. We will make sure that, for issues of this importance, it will be at least at ACC level.

Mr Beggs: Secondly, on the matter of abolishing previous offences and convictions associated with them, will any of these amnesties and wiping of the slates include activity involving those who were underage at the time — in other words, minors?

Ms Patterson: No, not at all. The criteria will be that the activity must have been consensual and that it must have been with someone over the age of 16.

Mr Beggs: Sorry. my question was involving any activity of someone who was underage at that time according to the law at that time.

Ms Patterson: Yes, that is what it is about. There were —

Mr Beggs: The law changed in 2007. The age of consent was 17. It became 16. My question is to do with anyone who was over 16 but may have been 17 and was deemed to have been under the age of consent. Will any activity involving someone who would have been deemed to be a minor at the time be included in this amnesty?

Ms Patterson: Yes.

Mr Beggs: Why are you proposing to use the term "current age" rather than "age of consent pertaining at the time"?

Ms Patterson: Because the age changed over different years. If these were offences committed prior to 1982, it would have been criminalised whatever the age of the other party to the offence. Between 1982 and 2000, the other party had to be 21, then it changed to 17 at 2000 and then to 16 over here in 2009. The fact that it is no longer criminal behaviour is the criterion for applying for the conviction to be disregarded.

Mr Beggs: Can you clarify why you choose to use the term "current age of consent" rather than "the age of consent pertaining at that time"? The wording could easily reflect that wording, and then it would be entirely neutral towards an individual's sexual activity.

Ms Patterson: If the offence took place prior to 1982, there would be no disregarding of the offences and no pardons, because everybody was criminalised until that point. I am sorry, I am not with you.

Mr Beggs: My point is that we may be decriminalising people who had consensual sex with someone under the age of consent — that is, 17 at that time.

Ms Patterson: Yes, but it was under 17, and now it is under 16, so it is whatever is —

Mr Beggs: I know, but at that time it was 17. So might we be decriminalising people who had consensual sex with someone who was below the age of consent?

Ms Patterson: Yes.

Mr Beggs: Why?

Ms Patterson: Because it is no longer criminal behaviour.

Mr Beggs: But were they prosecuted, potentially, for having activity with someone under the age of consent as a separate prosecution?

Ms Patterson: No, it would have to be the same offence. Whether it was gross indecency or buggery, it would be that offence.

Mr Beggs: I am just trying —

Ms Patterson: I am sorry. Maybe I am not understanding the question very well.

Mr Beggs: I understand the proposal in applying retrospectively the age of 16, for someone who may have been involved with an adult between the ages of 16 and 17 which, at that time, was deemed to be under the age of consent. Had they been heterosexual, as was mentioned earlier, they would have been prosecuted. But we are proposing, even though it was under the age of consent at that time, to decriminalise. So, knowingly, that person would have had sexual activity with someone under the age of consent.

Ms Patterson: Yes. But that was only from the year 2000. Before that, the age was 21. For anybody under the age of 21, it was a criminal offence.

Mr Beggs: My question is why we are not using the wording "sexual activity below the age of consent pertaining at that time"?

Ms Patterson: Because the policy is to provide a disregard of sexual activity which was a criminal offence then, but is no longer so now.

Ms Bailey: Gary said that, if it is a criminal offence today, the conviction still stands.

Ms Patterson: Yes.

Mr Beggs: I just find it strange that we are whitening someone who had sexual activity with someone who, at that time, was deemed to be under the age of consent.

Ms Patterson: The homosexual age of consent and the heterosexual age of consent were different until the year 2000, when they were equalised at 17. This is the point that was made earlier about whether there is an equality issue about offences where girls were involved. That is what I was talking to the Chairman about earlier.

The Chairperson (Mr Frew): I do not pretend to understand everything here with regard to the question and the answer. I know that it says "current" but, if the current age is 16 or 17 depending what jurisdiction you are in, that catches the 16-, 17- and 20-year-olds within the pardon grace, if you know what I mean. Because it keeps being lowered, they are covered.

Mr Beggs: Yes, but my point is, should someone who has sexual activity with someone who was deemed to be under the age of consent be pardoned?

Ms Patterson: But that is the whole purpose of these provisions, which we are just seeking to replicate. That is the whole purpose of the disregard scheme in the Protection of Freedoms Act 2012 and the whole purpose of the amendments that were passed in the House of Lords yesterday for England and Wales. It is to pardon or disregard offences that are no longer criminal activity. Those are matched up to the various ages for homosexual activity when it used to be —

Mr Beggs: Yes, but the issue is that it is only about homosexual activity. It is not about all sexual activity.

Ms Patterson: But heterosexual activity was never a criminal offence, other than with someone under the age of consent.

Mr Beggs: I will perhaps pursue the issue later. The issue is the age of 16 being used rather than, at one time, the age of 17. That is what I do not understand. My understanding is that there could have been prosecution under two items, and we are going to be giving complete amnesty.

Ms Patterson: Well, that is the point that was made earlier.

The Chairperson (Mr Frew): OK, there are no further questions. Alex, did you say that you wanted in? No? OK, I want to nail this down. It would be remiss of us to let you go without nailing it down. The Committee desperately needs or wants a new vehicle to bring in hot pursuit powers; we have said it over and over and over again. What timescales are envisaged by, probably, the Home Office?

Ms Crawford: On the point about what needs to happen to bring the hot pursuit powers in, we need to close out the issue with Police Scotland. We will continue our engagement with the Scottish Government. As I said, we have already secured the agreement of the Police Ombudsman on oversight. We need to continue to pursue the other issue — the accountability issue — with the Policing Board, and we will do so. We will continue our engagement with the Home Office. Once we close out those issues and concerns, we will work with the Home Office, preferably to identify a legislative vehicle that it can take through, because it wants these powers as well. We would then replicate them through an LCM. However, as I say, we will need to be looking for an appropriate legislative vehicle that allows this to fall within scope. We will work closely with Home Office colleagues to seek to do that.

The Chairperson (Mr Frew): Whilst I understand that it would be great to have uniformity across the different parts of the United Kingdom, with regard to Trevor's point, is it essential to have Scotland enclosed in those hot pursuit powers, considering that the Department of Justice thought that it was OK to leave the PSNI out in the first place? How long do we give Scotland on this?

Ms Crawford: The ideal solution is that all the powers are contained within a single legislative base. As I said earlier, that is because that would provide clarity for all concerned: the various police forces, the oversight bodies, the officers and the public. It would also be operationally more efficient if everything was covered at one time. It would certainly be our preference to try to find a vehicle to do it all. We can reflect on what the implications might be if we had to proceed without Police Scotland but, operationally and legislatively, it would be much more straightforward to have everything in the one place, and that is our preference.

The Chairperson (Mr Frew): I agree that it would be much more straightforward, but I do not think that it should be an essential element because, at a time, it was OK to leave the PSNI out. Whilst we would like all-encompassing hot pursuit powers that are reciprocal right across the UK, I do not think that it should stop the other component parts from benefiting from a relationship on hot pursuit.

Mr Meehan: It is certainly desirable to have the closest land mass to us across the Irish Sea as part of it but, if we cannot, we will move on.

The Chairperson (Mr Frew): OK. Well, this is something that I am not going to drop. We will keep having a timely look at it and writing to you with regard to the timescale and how work is progressing. Thanks very much for your time.