

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

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## LEGISLATIVE CONSENT MOTION – POLICING AND CRIME BILL

**FROM:** TIM LOGAN  
**DATE:** 7 NOVEMBER 2016  
**TO:** CHRISTINE DARRAH

### Summary

**Business Area:** Policing Policy and Strategy Division.

**Issue:** Update on the revisions to the Legislative Consent Motion – Policing and Crime Bill

**Restrictions:** None.

**Action Required:** Members are asked to consider the recent new provisions now included in the proposed LCM which Members have not yet had an opportunity to consider. These relate to amendments tabled just a matter of days ago to the Policing and Crime Bill which would provide for pardons for convictions relating to now abolished homosexual offences.

**Officials Attending:** Rosemary Crawford, Deputy Director, Policing, Policy and Strategy Division  
Michael Meehan, Policing, Policy and Strategy Division  
Gary Dodds, Policing, Policy and Strategy Division  
Amanda Patterson, Head of Criminal Policy Branch

### **Background**

This briefing paper also provides a response to the Committee's letter of 17 October which set out the Justice Committee's position regarding the proposed Legislative Consent Motion (LCM) in relation to Maritime Enforcement Powers. Officials noted the Committee's conditional approval of the proposals and, in light of this and wider developments in the interim, would wish to provide the Committee with an update on the LCM provisions proposed in relation to the Policing and Crime Bill.

### **Maritime Enforcement Powers**

In relation to maritime enforcement powers, the Committee will recall that, initially, legislative consent was sought solely for the exercise of powers by officers from England, Wales and Scotland into NI territorial waters in hot pursuit situations. Such powers related to the prevention and/or detection of any England, Wales or Scotland offence.

At the oral briefing to the Committee on 15 September, officials noted that such hot pursuit powers into NI territorial waters were part of a suite of wider enforcement powers for GB officers for the purpose of preventing, detecting, investigating or prosecuting offences on ships. Specifically, these powers would allow GB law enforcement officers to board, divert and/or detain vessels and to search for and obtain information. During discussion, the Committee enquired as to why reciprocal powers were not being sought for the PSNI. Our initial engagement with the PSNI concluded that there was not a pressing operational need for such powers. However, following further consultation with the PSNI, it was agreed that reciprocal maritime enforcement powers (including in hot pursuit circumstances) should be sought for the PSNI.

Following consideration, the Committee attached three conditions to Members' approval of maritime enforcement powers. Firstly, hot pursuit powers should be extended to the PSNI. Secondly, the Policing Board should be content with the proposals for retrospective accountability by the Chief Constable to the Board. Thirdly, the extension of such powers to Police Scotland officers in hot pursuit circumstances should only remain in the LCM provided the Scottish Government agreed to oversight by the Office of the Police Ombudsman for NI.

Officials attended a meeting of the Policing Board on 22 October and discussed the proposed oversight and accountability arrangements. Unfortunately, while some Board Members were supportive, the Board was unable to reach an agreed position and sought further time to consider the matter.

Also, despite protracted engagement, it has not been possible to secure the agreement of the Scottish Government to oversight of Police Scotland officers when operating in NI waters.

In the absence of agreement, and given the tight legislative timescales associated with the Bill, the provisions for hot pursuit into NI waters have been removed from the proposed LCM. That said, we remain of the view that there is merit in seeking to resolve these issues and to reach a mutually acceptable agreement in slower time. The Minister has, therefore, asked officials to continue to engage with stakeholders and, if agreement is reached, then seek to identify an appropriate legislative vehicle to give it effect.

So in summary, as the LCM currently stands, it seeks the extension of wider maritime enforcement powers to the PSNI that would allow PSNI officers to stop, board, divert and detain a vessel; to search and obtain information; and to arrest and seize evidence of any offence, on vessels in NI territorial waters. Provisions in relation to the use of such powers in hot pursuit circumstances, in both directions, have been removed.

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### **Wider Issues**

Members will recall considering, and approving, the extension to NI of powers in relation to three other areas contained within the Police and Crime Bill, namely: anonymity for victims of forced marriage; UK cross jurisdictional arrest powers; and biometric retention for convictions outside NI. There is no change in relation to the first two issues, however, the position in relation to biometric retention has changed.

While overall, the Committee was content with the provisions relating to the retention of DNA and fingerprints on the basis of a conviction outside NI, some members indicated they were opposed to it. Officials circulated a draft Executive Paper for consideration by the Executive at its meeting on 27 October. Following feedback on the draft, the final Paper tabled and ultimately approved, did not include the provisions relating to biometric retention.

### **Pardons for convictions for abolished homosexual offences**

Officials wish to draw to the Committee's attention, new provisions now included in the proposed LCM which Members have not yet had an opportunity to consider. These relate to amendments tabled just a matter of days ago to the Policing and Crime Bill which would provide for pardons for convictions relating to now abolished homosexual offences. The Minister sought, and received, through Urgent Procedure, Executive agreement to seek to extend these provisions to NI. The proposed LCM has, therefore, been updated to reflect this.

By way of background, the Committee will wish to note that the UK Government has indicated support for late amendments, tabled by Lord Sharkey at Lords Committee stage, to provide, in England and Wales, statutory pardons for persons with convictions (including military convictions under Service Law) for abolished homosexual offences involving consensual activity with persons over the current age of consent. These amendments build on existing provision, in England and Wales, in the Protection of Freedoms Act 2012 which introduced a disregard scheme for such offences. These provisions do not extend to NI.

Subsequent amendments, tabled by Lord Lexden, seek to make analogous provision for NI by introducing the disregard powers in the Protection of Freedoms Act 2012 along with the new provisions which will provide statutory pardons for abolished homosexual offences.

Inclusion of these provisions in the proposed LCM will allow the UK Parliament to include Lord Lexden's amendments and thereby provide the same arrangements in NI, as proposed for England and Wales, in relation to the pardoning of abolished homosexual offences.

The Committee will wish to note that a consolidated LCM was laid in the Assembly Business Office on 27 October. A revised LCM, to include the provisions relating to pardons for abolished homosexual offences, was laid in the Assembly Business Office on 7 November. This revised LCM supersedes the previous LCM laid on 27 October. A copy is attached for ease of reference. The provisions sought relate to:

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- maritime enforcement powers (excluding hot pursuit);
- anonymity for victims of forced marriage;
- UK cross jurisdictional arrest powers; and
- pardons for abolished homosexual offences.

I trust this update is helpful, particularly in terms of preparing the Committee's report. Officials will attend the Committee meeting scheduled for 10 November and will be happy to provide any further clarification. Officials are liaising with the Assembly Business Office with a view to the motion being scheduled for debate on 28 November.

*PP. Shona Rodgers*  
**TIM LOGAN**  
**DALO**

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