



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Policing and Crime Bill Legislative Consent  
Motion: Department of Justice

15 September 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 Trevor Lunn  
Mr Pat Sheehan

**Witnesses:**

Mr Gary Dodds	Department of Justice
Mr Michael Meehan	Department of Justice
Ms Julie Wilson	Department of Justice

**The Chairperson (Mr Frew):** I welcome to the Committee Michael Meehan, head of probation and Prisoner Ombudsman branch; Julie Wilson, head of organised crime branch; and Gary Dodds from the police powers and HR policy branch in the Department of Justice. I advise that the session is being recorded by Hansard and that the transcript will be published on the Committee page. Thank you very much, everyone, for appearing here before us in what is the first meeting after recess. You are very welcome to the Committee. Michael, you will lead off for us.

**Mr Michael Meehan (Department of Justice):** I am grateful for the opportunity to provide the Committee with an update on the three legislative consent motions (LCMs) seeking the extension to Northern Ireland of provisions in the Westminster Policing and Crime Bill, as the Chair has described. Members will have seen the written paper provided by officials in advance of the Committee's meeting on 16 June. If you are content, I would like to briefly highlight some of the key points so as to allow as much time as possible if Members have any questions. To assist, my colleague Gary Dodds will answer questions in relation to police powers. I will address issues of oversight and accountability of officers, and Julie Wilson will provide a read across, if required, to the Modern Slavery Act 2015.

I turn first to the proposed new maritime enforcement powers. To summarise, the Home Office proposes to legislate, subject to the appropriate legislative consent, to provide police and other law enforcement officers in England, Wales and Scotland with a suite of maritime enforcement powers for the purposes of preventing, detecting, investigating or prosecuting offences on ships in UK territorial waters, in international waters and in the territorial waters of other states. As part of that package of enforcement powers, the Home Office would like to make provision for hot pursuit powers into the

territorial waters of the UK jurisdictions. For Northern Ireland, subject of course to the Assembly's legislative consent, that would mean that GB law enforcement officers could exercise maritime enforcement powers in Northern Ireland waters in cases where a ship is pursued there from other UK and international waters.

The Department has consulted the PSNI, and the view at present is that there is no pressing need for equivalent maritime enforcement powers to be extended to police and other law enforcement agencies in Northern Ireland. The LCM, if passed by the Assembly, is only in relation to hot pursuit powers of GB enforcement officers in Northern Ireland waters. Members may be aware that the Assembly has already consented to maritime enforcement powers under the Modern Slavery Act 2015. The powers under that Act were limited in scope to modern slavery offences and are separate to the wider powers now proposed, which would be applicable to any offence under the law in England, Wales or Scotland. The majority of the powers under the Modern Slavery Act came into effect on 8 August this year, with the exception of the hot pursuit powers, which allow police officers to exercise enforcement powers in other UK jurisdictions when in hot pursuit.

We have been continuing to engage with colleagues in the Home Office to ensure that the necessary accountability arrangements are in place that should apply in respect of the hot pursuit powers under both the Modern Slavery Act and the Policing and Crime Bill. Our intention is for a local accountability model, mirroring, in effect, the arrangements that govern the operation of mutual aid. We intend that the Police Ombudsman for Northern Ireland (PONI) would have primacy in handling all complaints about police officers, regardless of which force they are from, when exercising these enforcement powers in Northern Ireland waters. We are still working through the detail of an agreement with the Home Office and the Scottish Government, although we believe that legislation would be needed to clarify the Police Ombudsman's powers of oversight.

The second proposed LCM relates to the current powers of arrest across the UK. Under existing legislation, a police officer in Northern Ireland cannot without a warrant arrest a person in Northern Ireland who is suspected of committing an offence in England, Wales or Scotland. The intention of this LCM is to give effect in Northern Ireland to a Home Office proposal that would provide a UK-wide power for police officers to arrest without a warrant a person suspected of committing a specified offence in another UK jurisdiction; in effect, that would be a holding power until officers arrived from the jurisdiction where the offence was alleged to have been committed. They would then rearrest the person and take them back to that jurisdiction for questioning.

Care has been taken to ensure that the additional arrest powers would only be available to officers for serious offences. In addition, the time that the arrested person can be held would be restricted to a maximum of 36 hours and would be subject to regular review by a senior police officer. The person would also be entitled to the full range of rights and entitlements that any other arrested person would have while in police custody. The existing powers of entry and search for the purposes of making an arrest would also be amended to complement the new power, but that, too, would be restricted to arrests involving serious offences.

Finally, a third LCM relates to a change to the new framework for the retention of DNA and fingerprints taken by police in connection with a criminal offence. Under the new regime, which is yet to be brought into force, a person's DNA profile and fingerprints taken in Northern Ireland may be retained on the basis of a conviction here or for a reportable offence in England, Wales or Scotland. The Department wishes to replicate a change to be made to the equivalent biometric framework in England and Wales. That change will amend the current provisions to enable police to retain DNA and fingerprints taken in Northern Ireland on the basis of a conviction recorded against a person anywhere outside Northern Ireland.

I hope that brief overview has been helpful. We are, of course, happy to take any questions.

**The Chairperson (Mr Frew):** Thank you. Do Gary and Julie want to come in at this stage?

**Mr Meehan:** No. We are content.

**The Chairperson (Mr Frew):** When reading this, even in June, what struck me was this: why would the PSNI not wish to have the powers of hot pursuit?

**Mr Gary Dodds (Department of Justice):** We consulted the PSNI on the proposals. The police held the view that they had pretty limited maritime capabilities in Northern Ireland and therefore did not

want the wider powers proposed here, which go beyond the enforcement powers that they already have.

**The Chairperson (Mr Frew):** What do they have? That is not clear.

**Mr Dodds:** They have modern slavery enforcement powers and drug enforcement powers, which are probably for offences related more to vessels than maritime offences as such. They did not feel that there was a pressing need for those additional powers at this time, bearing in mind that they do not have maritime capabilities, enforcement vessels and whatever else. That was the view that the police held. From a departmental perspective, we did not think that it was justified to ask for an LCM on something that the police did not want at this juncture. If they want the powers in future, the Assembly can legislate. These are devolved matters, so this is open to legislation.

**The Chairperson (Mr Frew):** I do not know how often hot pursuit happens in our waters, but surely it would be better to take a holistic approach and have a two-way street, for want of better terminology. Someone trying to make a getaway could, I am sure, go in any direction. I just do not understand why, even though you do not have the capability at this time, you would not want to have the powers and let them sit there. It is clear that they have asked for the powers in Scotland, so why would the Department not do so? Even though the PSNI says, at this stage, that it does not need or want the powers, why would the DOJ not take the decision to have them anyway?

**Mr Dodds:** Ordinarily, we as a Department prefer that legislation is taken through the Assembly. We ask for a legislative consent motion only when we feel that there is a justified and pressing need for legislation to be put into a Bill at Westminster, particularly on a matter like this that is devolved and would ordinarily be legislated for via the House. When we had a response from the police that they did not feel that there was a pressing need for the additional powers at this time, that justification was not there.

**The Chairperson (Mr Frew):** Why do they not have capability? Why is their capability limited?

**Mr Meehan:** Their capability is limited because of their operational capacity beyond the 12-mile barrier. They do not feel that they have the capacity to operate in seas beyond 12 miles out.

**The Chairperson (Mr Frew):** They are not being asked to operate 12 miles out; they are being asked whether they want those powers so that, if they need to pursue, they can. They police our waters; is that not correct? They have a limited capability to police our waters.

**Mr Dodds:** They have a limited capability to police our waters; that is right. These powers would introduce a much wider power to police our waters for any offence, not just specific offences. I mentioned modern slavery and drugs. As regards hot pursuit, that would be only a small additional provision bolted on to the wider powers where, say, you had a PSNI vessel chasing a vessel in Northern Ireland waters that reached the 12-mile territorial limit. In that case, if it were an LCM that we were asking for here, we would obviously ask for a hot pursuit power so that the PSNI vessel could go into English, Welsh and Scottish waters. That would be the hot pursuit provision bolted onto the wider powers. Obviously, we would not want a situation where a vessel had to stop at the 12-mile limit once it entered another —

**The Chairperson (Mr Frew):** Is that not the risk here if this is not passed or an LCM not required?

**Mr Dodds:** The risk basically is that, if the LCM were not passed, it would prevent English, Welsh and Scottish vessels from going into Northern Ireland waters. We certainly would not want Northern Ireland waters to be a safe haven. In cases where English, Welsh or Scottish officers in a vessel are pursuing a vessel beyond the territorial waters of England, Wales or Scotland and that vessel goes into Northern Ireland waters, the LCM would allow English, Welsh and Scottish officers to exercise powers in Northern Ireland waters.

**The Chairperson (Mr Frew):** Sorry: I got that the wrong way round. If we pass this LCM, PSNI vessels still would not be able to go into Scottish, English or Welsh waters.

**Mr Dodds:** For this wider provision of offences. They would have hot pursuit powers for modern slavery offences.

**Ms Julie Wilson (Department of Justice):** They currently have hot pursuit powers under the Modern Slavery Act 2015, although those powers have not been commenced yet because of the outstanding issues that we are trying to resolve around accountability. The intention is that, once those have been resolved, we would commence those powers. The powers that they have to operate within Northern Ireland waters on modern slavery offences have already commenced.

**The Chairperson (Mr Frew):** But there is no issue with accountability mechanisms for hot pursuit on the modern slavery and drugs stuff because they are with the Police Ombudsman for Northern Ireland.

**Ms Wilson:** The issue around accountability for modern slavery offences was that, when the LCM was going through and we had been engaging with the Home Office on that, we made it clear to the Assembly that the accountability model that we envisaged would replicate or mirror the arrangements for mutual aid: where an English, Welsh or Scottish officer was exercising powers in Northern Ireland waters, they would be accountable to the Police Ombudsman for Northern Ireland. We discussed putting it in the Bill, and the preference of the Home Office at that stage was to do it by way of an agreement like the section 60 agreements that govern mutual aid operations.

We have subsequently taken further legal advice. It has advised that, in order to clarify PONI's powers to investigate complaints against English, Welsh and Scottish officers, it would be better for us to legislate for that. We have been working over the summer with the Home Office to agree that position. Now, we just need to finalise the detail of that legislation.

**The Chairperson (Mr Frew):** Am I right to say that that will form part of whatever legislation you require to fix this?

**Ms Wilson:** Yes.

**The Chairperson (Mr Frew):** This will be part of the Policing and Crime Bill going through the House of Lords at present.

**Ms Wilson:** Yes, so we would anticipate the Home Office tabling amendments to the Policing and Crime Bill, and those will then need to be reflected in the legislative consent motion.

**The Chairperson (Mr Frew):** Why would it be such a bad thing for the Independent Police Complaints Commission (IPCC) to be able to investigate?

**Ms Wilson:** When the Modern Slavery Act was going through the Assembly, the advice we gave was that it would be a matter of local accountability, reflecting the primacy of the Police Ombudsman here on enforcement powers in Northern Ireland territory. That reflects the general policing accountability arrangements in Northern Ireland. That is what we told the Assembly, and that was the basis on which the LCM went through. We want to deliver that model because that is what the Assembly agreed to, and that is what we have been working with the Home Office on.

**The Chairperson (Mr Frew):** To be clear, if there is anything involving the PSNI, whether that is on land or water, and a complaint goes in, it goes to the Police Ombudsman at present. When the LCM and the Policing and Crime Bill go through, do you envisage that, when Scottish or English constabularies end up in our waters and there is a complaint, that will be for the Police Ombudsman for Northern Ireland to investigate?

**Mr Meehan:** Yes, Chair.

**The Chairperson (Mr Frew):** Does the IPCC have a view on that?

**Mr Meehan:** As Julie said, we have been working extensively with colleagues in the Home Office, and they have been liaising with the IPCC as one of its bodies.

**The Chairperson (Mr Frew):** We know your position because you have outlined it very well. What is the Home Office position?

**Mr Meehan:** The Home Office is in agreement. We believe that we have the basis for an agreement that provides for local accountability and the primacy of the Police Ombudsman for Northern Ireland over an officer regardless of which force they are from, and the Home Office has agreed.

**The Chairperson (Mr Frew):** What does the Police Ombudsman for Northern Ireland think?

**Mr Meehan:** We have engaged with the ombudsman's office, and it is content with this as well.

**Mr Beggs:** I am trying to understand why police would not want the power. You say they have the power under the Modern Slavery Act.

**Ms Wilson:** Yes.

**Mr Beggs:** You also said that they do not particularly want it because they do not have the capability. Are you saying that they do not have the capability under the Modern Slavery Act to do anything?

**Ms Wilson:** They have limited capabilities and a number of vessels that they can use. When they run a modern slavery operation, quite often that would be a multi-agency operation, so there would be the capacity to use other vessels.

**Mr Beggs:** Presumably, they could, with the agreement of local boat owners, have the use of vessels if there was an emergency and the need to pursue something. I am from east Antrim, and, if I look across the water from my house, I can see Scotland about 20 miles away. You say that, at the minute, they can go about half way and would have to stop.

**Ms Wilson:** At the minute, on modern slavery offences, their powers do not take them across that line. The intention is that, once we have resolved the accountability issues, they would do.

**Mr Beggs:** Regarding a wide range of other offences, what will happen after the proposed legislative consent motion? Would they be able to?

**Mr Dodds:** Not for the wider range of offences.

**Mr Beggs:** Why not?

**Mr Dodds:** Simply because, when we asked the police whether they were interested in the wider maritime powers, they felt that their maritime capabilities were limited to the specific offences that they operationally could deal with. They felt that there was not a pressing need at this time.

**Mr Beggs:** Why not simply have reciprocal arrangements built in?

**Mr Dodds:** I understand where you are coming from. The problem that we have here is that we are seeking a legislative consent motion to piggyback on a Westminster Bill on an issue that would ordinarily be legislated for by the Northern Ireland Assembly.

**Mr Beggs:** In piggybacking on it, should we not look for a reciprocal arrangement so that our police could, if they so wished and there was a need and a vessel available, pursue any criminality?

**Mr Dodds:** Had the police come to us and said that they had maritime capabilities to enforce the wider scope that is envisaged here, certainly we would have come to the Committee to ask for that.

**Mr Beggs:** Chair, we should bring the PSNI here and find out why they do not wish to have powers to pursue. This does not make sense to me. You may not be able to implement it frequently or in the short term, but why not have the power? I am just conscious that it is 20 miles to Scotland — from Rathlin or Ballycastle it is even less; what is it, 12 or 13 miles? — and a small cruiser can very quickly get across. Anybody who is wanted in Northern Ireland would know that they can get on a boat and, as soon as they are 12 miles out, they will be away. Why not build in the capability? We should bring the PSNI here to question them on this issue, and we should seek an amendment in the House of Lords, so that Northern Ireland gets a reciprocal arrangement.

**The Chairperson (Mr Frew):** I am conscious that we already have a lot of oral briefings from matters arising. Can we write at first and see what they say? Are members agreed?

*Members indicated assent.*

**The Chairperson (Mr Frew):** Roy, is that you finished? There is a list here, Sammy: is your question on this specific issue?

**Mr Douglas:** Yes; it is on the letter. I want to ask how the PSNI came to this decision. Was it a business case or an economic appraisal? Did they do nothing? Are there other options? If that is the case, we should ask whether they can provide evidence as to why they made the decision.

**Mr Dodds:** As with most policy decisions that involve operational policing matters, we would consult the PSNI. We would consult the individuals or the senior officers —

**Mr Douglas:** I am asking whether the PSNI did an economic appraisal or a business case. Has the situation changed? Has the environment in maritime issues changed over the last five years? I am sure that it has. Are we saying that we will do the same again in the next five years? I do not know.

**The Chairperson (Mr Frew):** We will bring that up in the letter. There is a list here, folks. I know that members are all keen to get in now.

**Mr Lunn:** I am interested to know that Northern Ireland has its own territorial waters. I thought that they were all United Kingdom territorial waters, but there you are. Like everyone else here, I am slightly bewildered by the attitude of the police. If they have the maritime capability to go out 12 miles, they are out on the open sea. It is no different being five miles or 15 miles out, given the jurisdiction that we live in, in the Irish Sea. Let us hear from the police at some stage. It seems odd not to standardise the thing across the UK. The last thing I will say is that we will probably revisit this in about three years' time, if Brexit goes according to plan, depending on where the border is.

**Ms Bailey:** What is Brexit's plan?

**Mr Lunn:** There is none.

**The Chairperson (Mr Frew):** OK. I do not know whether there was a question there, Trevor.

**Mr Lunn:** No, there was not.

**Mr Beattie:** I will start by saying that I am with Roy on this one. It makes no sense. Intelligence-led operations could mean the police trying to intercept somebody on the seas, having an asset to do that, giving chase and needing that. I am with Roy on this one.

This question is just to fill my knowledge gap, because when I go too close to the coast I get a nosebleed. There is a 12-mile limit that they can come in to, which we class as our territorial waters: where does that go up to? Does it go up to our coast by 500 metres, 200 metres, 100 metres or ankle depth? Secondly, if an English police force gives chase and arrests somebody, for example, 100 metres from our coast, do they then bring them back to go through the English judicial system? How does that work? Does that question make sense?

**Ms Wilson:** Under the Modern Slavery Act, they would bring them back to the home jurisdiction. English and Welsh officers would bring them back to England and Wales. They are being pursued under the law of England and Wales and in respect of an offence under the law of England and Wales, so it is back to that jurisdiction.

Where do the 12 miles start? I am not sure whether it is ankle-deep or knee-deep. I know that, where the distance between one jurisdiction and another is not 12 miles, the halfway point is where it starts at sea. In Carlingford or Foyle, for example, the jurisdictional boundary will run down the middle of those bodies of water, but, going out into open sea, it is 12 miles out. I am not sure whether that is on the shore or the depth of a boat.

**Mr Beattie:** What does that mean, for example, for a criminal leaving Northern Ireland intent on grounding stuff in England? He gets halfway, is spotted by police in England and makes a dart back for Northern Irish territorial waters. Then, when within two miles of those waters, he is arrested by the police. Is he returned to England even though the crime originated in Northern Ireland?

**Ms Wilson:** In the case of modern slavery, if the crime originated in Northern Ireland, those likely to be giving chase are the PSNI or other enforcement officers with powers in these waters. If the criminals then came back into Northern Ireland waters, they would be apprehended here. If the crime originated here, it comes back to here and is pursued under the law of this jurisdiction. If the crime originates in England and Wales and the criminals are being pursued into Northern Ireland waters, it goes back to England and Wales. Does that make sense?

**Mr Beattie:** Kind of, but I am not even sure that I have an intelligent question to ask on the back of that. Thank you.

**Mr Sheehan:** You may not know the answer to this, but have there been any situations in which the PSNI was in hot pursuit and officers were unable to apprehend someone they were chasing because they came to the territorial limit?

**Mr Meehan:** No, I am not aware of any instance of that happening.

**Mr Beggs:** We were told that they did not have the capability, so it will not happen.

**Mr Sheehan:** When a boat or ship appeared to be heading towards Scotland, presumably the police here and the police in Scotland would be in contact in some way.

**Mr Meehan:** We assume that the overall policing operation would involve cross-jurisdictional liaison with other forces, yes.

**Mr Sheehan:** Given that it is such a relatively small area between here and Scotland, you would, in a sense, duplicate capability if the PSNI also had the capability of hot pursuit.

**Mr Meehan:** Perhaps, yes.

**Mr Sheehan:** Could that be a reason why the police might not want powers of hot pursuit?

**Mr Meehan:** It may be.

**Ms Bailey:** Are budgetary constraints an issue? If we are to contact the PSNI, I am happy enough to wait for the response. Will it put financial pressure on the police?

**The Chairperson (Mr Frew):** That would be a concern. I have dealt with the PSNI on various legislation changes, and it seems to be scared of a process and a burden. That really annoys and worries me about the PSNI. It should really be a servant of the law, pursuing and enforcing the law, whatever the law is.

Gary made a point that astounded me. We all know what an LCM is and the instrument that is used. Why are we scared of an LCM in this regard? Michael said that he would rather this came through the Northern Ireland Assembly. I understand why everyone would rather it came through the Assembly, but when we have an opportunity, as we do with the Policing and Crime Bill, why are we scared of an LCM?

**Mr Dodds:** Maybe I did not present that well. I do not think that I used the word "scared".

**The Chairperson (Mr Frew):** No, you did not.

**Mr Dodds:** The departmental policy or view is that we have a legislative Assembly and LCMs should be used only when there is an absolute need and a justification to piggyback on a Westminster Bill. In these three instances, we feel that there is a justification for LCMs, but, ordinarily, these things would be legislated for through the Assembly process.



**The Chairperson (Mr Frew):** I agree with you. A lot of this is common sense, and I am minded to support all three LCMs. What annoys me is that it seems to be the case that the Policing and Crime Bill has come too quickly for the DOJ and the Home Office, because we have not yet sorted out the issue of accountability coming from the Modern Slavery Bill. That is basically the problem. Do you agree?

**Mr Meehan:** We believe that we have the basis of an agreement with the Home Office on accountability for both pieces of legislation and that the ombudsman will have primacy. In that regard, we are pleased.

**The Chairperson (Mr Frew):** When will that be finalised and crystallised? When will the accountability issue be resolved? Timescales are important for the Committee also.

**Mr Meehan:** Yes, they are indeed. We envisage getting some policy instructions to the Home Office on the legislation very shortly.

**Ms Wilson:** We anticipate that amendments will be made while the Bill is at the Lords stage. That would mean the Bill having to go back to the Commons for agreement on the Lords amendments.

**The Chairperson (Mr Frew):** Surely that is weeks as opposed to months.

**Ms Wilson:** We have agreement on the policy approach. We have provided rudimentary instructions for pulling this together into proper policy instructions for the Home Office so that it can go ahead and draft the amendments and get those tabled as a matter of urgency. We are working on that urgently.

**The Chairperson (Mr Frew):** The concern that I have felt and heard from the Committee today is that there seems to be a bit of a mess. Accountability is cloudy, as is the issue of whether we should have an opinion on who should be the investigator: the Police Ombudsman or the Independent Police Complaints Commission in London. That is the issue that needs to be resolved. You need to crystallise that and tell us what your thoughts are. Your thoughts are that it is the Police Ombudsman. I do not know that there is a great debate or argument to be had here. What worries me is that the cloudiness around the Modern Slavery Bill is coming into this Bill.

The second part that really worries me is the fact that we have not requested the reverse powers that England, Scotland and Wales have asked for. I do not know whether that is lack of ambition, fear of the burden or lack of capacity. Given the questions that we have heard from members, it seems to worry the whole Committee. We need to write to the PSNI and enquire about that.

An LCM is a useful thing, so why not have the powers there in case we ever need them? We might never use them, but there is plenty in the statute books that is never used or enforced. I do not understand why the Department of Justice can say, "OK, we hear you, PSNI. You do not really need these. You do not see any reason why you need them, but we will place them there anyway because things can change". That is what worries me about this.

**Mr Beggs:** The geography of the area makes it important that the potential for hot pursuit is there. I think particularly of a boat going from Ballycastle or Rathlin to the Mull of Kintyre, a relatively short distance to a very remote part of Scotland. There are lots of inlets, and you can go on up to the islands. When the PSNI picks up the phone up and rings the Scottish police, is that the Glasgow police, the Oban police or who? Do they think that they will send a bobby to look along 200 or 300 miles of coastline to see whether a vessel is coming in? There could be occasions when hot pursuit is the best method, so why not build it in?

**Mr Attwood:** From our point of view, any person with constabulary or policing powers who operates in Northern Ireland on sea or land must be accountable, in terms of police complaints, to the Police Ombudsman only. We are not having any National Crime Agency (NCA) officer or British police officer, from wherever they might come, being anything other than accountable through that mechanism. Unfortunately, we do not have that in respect of other personnel who operate in Northern Ireland, not least the Security Service. A question that might make it more difficult is this: if a Scottish police officer in hot pursuit comes within 12 miles and somebody makes a complaint to the Police Ombudsman, who accounts to the Policing Board for the conduct, policy and practice that may have arisen in that hot pursuit?

**Mr Meehan:** I am sorry, I did not grasp the —

**Mr Attwood:** Does the Chief Constable account to the Policing Board for the actions of a Scottish police officer who, when in hot pursuit, comes into Northern Ireland territorial waters?

**Mr Meehan:** I am happy to be corrected, Gary, but I think that, when, for example, a Scottish police officer comes into Northern Ireland territorial waters, unlike with the mutual aid provisions, he is still under the direction and control of his chief officer. That is why we would need some change to the legislation for this proposal: to enable the ombudsman to have oversight. In terms of the Policing Board, I am not —

**Mr Attwood:** If someone is killed in a police operation in Northern Ireland territorial waters, that will be investigated by the Police Ombudsman. It needs to be confirmed that it is not just complaints that go to the Police Ombudsman: an incident that would normally give rise to proper investigation by the Police Ombudsman would have to be investigated by the Police Ombudsman. I would like confirmation that the mandate is wider than just complaints.

The second issue is that, if you amend the law to enable the Police Ombudsman to conduct inquiries into those matters, the law should also be amended to ensure that, in respect of such an incident, the Chief Constable accounts to the Policing Board for the operation and conduct of a police service other than the PSNI that is operating in Northern Ireland. That is what happens now with the NCA and, of course, with the PSNI. It is what should happen with any police service operating in Northern Ireland territorial waters or on land. We will look for that, as well as the Police Ombudsman matter, to be legislated for.

**Mr Meehan:** OK. On the second issue, I take your point. I confirm that the Police Ombudsman will look at all complaints or incidents in terms of the conduct of and any potentially criminal act by any officer in Northern Ireland territorial waters. The ombudsman, in a case involving conduct, would investigate and make recommendations; in the case of a criminal act, he would report directly to the Public Prosecution Service in Northern Ireland.

**Mr Attwood:** When there is an incident in which a citizen dies in Northern Ireland, the Police Ombudsman is called in immediately and the police back away. Is that what will happen in respect of —

**Mr Meehan:** Yes, that is what we are working to get.

**Mr Attwood:** Is it more than complaints?

**Mr Meehan:** It is all.

**The Chairperson (Mr Frew):** How can you ask us whether we are content with an LCM when we have not finalised and crystallised the accountability, which is one of the major issues?

**Ms Wilson:** We recognise that you are not able to consent to it at this stage, but we wanted to update you on the work that we have been doing over the summer with the Home Office and brief you on the direction of travel and what we are trying to do through legislative change.

**The Chairperson (Mr Frew):** On the timescale, are we talking about weeks? Can we put a finer point on it? I know that we are dealing with the Home Office, but —

**Ms Wilson:** At this point, we do not have a date to give you, but we can go back to the Home Office and come back with some indicative dates.

**The Chairperson (Mr Frew):** What is the latest date by which the Minister will have to lay the memorandum of understanding for the LCM?

**Mr Dodds:** The Bill is at Lords Committee stage, after which is Lords Report stage. My understanding from the Bill manager is that they would need the LCM by the end of October/early November for those provisions to remain in the Bill.

**The Chairperson (Mr Frew):** I suspect that there are a lot more discussions to be had with the Home Office to tease this out.

**Mr Dodds:** There is a process here. We need to go to the Executive with the LCMs and then a motion in the Assembly needs to be tabled. That all takes time. We are conscious of the timelines.

**The Chairperson (Mr Frew):** We will leave it for today, but one issue is the cloudiness around accountability. I do not know that there will be disagreement in the Committee or even the Assembly on the accountability mechanisms. Alex outlined his concern. I am not pre-empting what the Assembly will do, but I do not see that there will be any really entrenched positions that we cannot get over. However, I feel a real fear about the PSNI not taking up powers that they may well need in the future, even if they do not have the capacity or capability now. I do not understand why the Department cannot bank those powers in case there is ever a need for them? Why would you go through the rigmarole of legislation again to get powers that Scotland, England and Wales have when you had the opportunity to pick them up here? That worries me.

**Mr Meehan:** For the avoidance of doubt and not to leave you with an incorrect impression, we believe that we have the basis of an agreement on accountability in respect of the Policing and Crime Bill. That is based on what the Assembly has agreed to under the modern slavery arrangements. I did not want to give a wrong impression.

**The Chairperson (Mr Frew):** Your destiny is not your own, though, because you are dealing with the Home Office. The Home Office could say, "We do not care what the Assembly wants. This is what we want". That is where we are all left. Our destiny is not our own.

**Mr Meehan:** Chair, can you confirm the position on the next steps for the other two LCMs, on biometric retention and cross-UK powers of arrest?

**The Chairperson (Mr Frew):** I do not see any reason why we cannot agree those. There were no really pressing questions. Does anyone want to speak up now on those?

**Mr Attwood:** On the other matters?

**The Chairperson (Mr Frew):** The other two LCMs.

**Mr Attwood:** The second one was about officers having holding powers. I think that that was the way that you put it.

**Mr Dodds:** Yes.

**Mr Attwood:** When something happens, a person from outside the PSNI has holding powers.

**Mr Dodds:** The current cross-border arrest powers do not provide a power for PSNI officers to arrest in Belfast someone who has committed a serious offence in Glasgow, for example. They can do it with a warrant, but they cannot do it without a warrant. What is proposed here is that they could now arrest without a warrant and that there would be a holding power until Scottish officers came to rearrest that person.

**Mr Attwood:** That is good.

**Mr Sheehan:** Would the accountability mechanisms be the same as those we discussed for the first LCM?

**Mr Meehan:** Yes. If we extend the power of the PSNI to enable officers to arrest without a warrant, that would still be subject to the Police Ombudsman.

**Mr Sheehan:** On the definition of a serious offence, will there be a schedule of serious offences in the legislation?

**Mr Meehan:** I think that that will be included in the Bill.

**Mr Dodds:** A two-tier approach is proposed. Any offence that attracts a prison sentence of 10 years or more will be an automatic offence. In addition to that, there will be what are called "specified offences", which will be in the legislation. Those are offences that do not attract a 10-year prison sentence but are deemed serious enough to attract an arrest power.

**Mr Sheehan:** Will those be in the Bill?

**Mr Dodds:** Yes, they will be in the Bill.

**The Chairperson (Mr Frew):** Sorry, in what Bill?

**Mr Dodds:** The Policing and Crime Bill.

**The Chairperson (Mr Frew):** That is already there, surely.

**Mr Dodds:** The provisions will be in the Bill. We are asking here for permission for them to remain in the Bill, because they extend to Northern Ireland. Ordinarily, they would be legislated for by the Assembly. We are looking for permission for those provisions to be legislated for at Westminster.

**The Chairperson (Mr Frew):** The list that Pat asked for should be at hand.

**Mr Dodds:** Yes. We have draft provisions there, and they are going through Lords Committee. The list is still being developed, but there is a list of specified offences that we have been working on. We do not have the finalised list — there are still some amendment stages — but there is a list.

**Mr Sheehan:** The document on the biometrics LCM states that the PSNI cannot hold the biometrics of someone who has been convicted outside the UK. Will you explain exactly what that means and give me an example?

**Mr Dodds:** Yes. The current law allows DNA and fingerprints taken by the police in Northern Ireland to be held indefinitely, irrespective of whether that person has been convicted. Back in 2013, the Assembly legislated for a new biometric framework to put in place a set of rules that prescribed how biometrics would be held in the future. One of the key rules was that it would depend on whether the person was convicted of an offence. Under the rules for the new system, not the current law, if an individual in Northern Ireland is arrested by the police, has their DNA and fingerprints taken, is not convicted in Northern Ireland of that offence but has been convicted of an offence when living or working in, say, Spain, that conviction would be used to retain the material taken in Northern Ireland. Similarly, the police would be able to retain on the basis of an English, Welsh or Scottish conviction.

**Mr Sheehan:** If it is known that there is a conviction anywhere, they can hold on to the fingerprints and DNA.

**Mr Dodds:** Yes.

**The Chairperson (Mr Frew):** On police powers across UK jurisdictions, the document states that cross-border powers will allow:

*"an officer in their own jurisdiction arresting a person without warrant on suspicion of having committed an offence in another UK jurisdiction."*

What constitutes "suspicion"?

**Mr Dodds:** The legislation is clear that it has to be "reasonable" suspicion. If you will just bear with me —

**The Chairperson (Mr Frew):** No problem.

**Mr Dodds:** — I will have a quick look. Yes, the legislation refers to:

*"reasonable grounds for suspecting that the person has committed a specified offence".*

It also specifies:

*"the constable also has reasonable grounds for believing that it is necessary to arrest the person*

—

*(i) to allow the prompt and effective investigation of the offence, or*

*(ii) to prevent any prosecution for the offence from being hindered by the disappearance of that person."*

— in other words, so that the person does not abscond and then avoid justice.

**The Chairperson (Mr Frew):** There are no further questions from members. I seek agreement to write to the Department to indicate that the Committee wants clarity on the accountability arrangements and the time frames for those to be solidified. We also want to consider the provision of pursuit powers for the PSNI. I think that that is where we are as a Committee. Of course, we will write to the PSNI to ask why it would not want those pursuit powers, but we are also asking the Department. Are members content?

*Members indicated assent.*

**The Chairperson (Mr Frew):** OK. We will let the officials go. Thank you very much for your time.