

LEGISLATIVE CONSENT MEMORANDUM

POLICING AND CRIME BILL

Draft Legislative Consent Motion

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

“That this Assembly endorses the principle of the extension to Northern Ireland of a number of provisions within the Policing and Crime Bill, by amendment at Lords Committee and Lords Report Stage, insofar as they relate to UK maritime enforcement powers; UK cross jurisdictional arrest powers; anonymity for victims of forced marriage and pardons for convictions of certain abolished offences.

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Policing and Crime Bill (‘the Bill’) was introduced in the House of Commons on 10 February 2016 and is currently at Lords Committee Stage. The latest version of the Bill can be found at:

<http://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0055/17055.pdf>

Summary of the Bill and its policy objectives

3. The Bill is in nine parts and its purpose is to further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services; enhance the democratic accountability of police forces and fire and rescue services; build public confidence in policing; strengthen the protections for persons under investigation by, or who come into contact with, the police; ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and further safeguard children and young people from sexual exploitation.
- Part 1 places a duty on police, fire and rescue and ambulance services to collaborate, and enables Police and Crime Commissioners to take on responsibility for fire and rescue services.
 - Part 2 reforms the police complaints and disciplinary systems, provides for a new system of “super-complaints” and confers new protections on police whistle-blowers. It also further strengthens the independence of HMIC and ensures that it is able to deliver end-to-end inspections of the police,

including by inspecting contractors and third parties who carry out policing functions.

- Part 3 enables chief officers of police to confer a wider range of policing powers on police civilian staff and volunteers.
- Part 4 contains a number of reforms to police powers, including the extension of police powers to investigate offences committed on vessels operating at sea.
- Part 5 makes further provision in respect of the term of office of Deputy Police and Crime Commissioners to enable them to be eligible for appointment as an acting PCC in the event of the office of PCC falling vacant mid-term.
- Part 6 seeks to better protect the public by amending the Firearms Acts so as to close loopholes that can be exploited by criminals and terrorists and by ensuring that, through statutory guidance, there is a consistent approach by chief officers of police to the consideration of applications for firearms licences and shotgun certificates.
- Part 7 amends the Licensing Act 2003 to improve the effectiveness of the alcohol licensing regime in preventing crime and disorder.
- Part 8 strengthens the enforcement regime for financial sanctions by increasing the maximum custodial sentence on conviction for breaching sanctions, expanding the range of enforcement options, including a new system of monetary penalties, and by providing for the immediate implementation of UN-mandated sanctions.
- Part 9 contains miscellaneous and general provisions, including new requirements on arrestees to confirm their nationality and defendants in criminal proceedings to provide their name, date of birth and nationality to the court.

Provisions which deal with a Devolution Matter

4. The draft motion covers four distinct policy proposals in the criminal justice sphere, one of which has only just been introduced at Lords Committee stage, and all of which fall within the responsibility of the Northern Ireland Executive. These are:
 - UK maritime enforcement powers;

- UK cross jurisdictional arrest powers;
- anonymity of victims of forced marriage; and
- pardons for abolished homosexual offences

The position in other devolved administrations

5. The first three proposals are modelled closely on similar provisions within the Bill insofar as they apply to England and Wales. The law in Scotland differs substantially from that in the rest of the United Kingdom so only the two provisions with a UK wide dimension will extend to Scotland. The fourth proposal is being introduced by amendment for England and Wales. We understand that Scotland is planning similar legislation in the coming year.

Reasons for making the Provisions

6. The Department is of the view that a sound and justifiable case exists for provision to be made within the Bill for all four proposals to be extended to the law in Northern Ireland.

UK maritime enforcement powers

7. Currently, the powers and privileges of a constable in Northern Ireland apply throughout Northern Ireland and within the 12 nautical miles seaward limit of its territorial waters. In the maritime context, this can hamper the effective disruption of criminal activity where court jurisdiction applies, as UK law enforcement agencies are not always able to act when a crime has taken place on ships around the UK or on the high seas.
8. There already exists limited maritime enforcement powers in section 20 of and Schedule 3 to the Criminal Justice (International Co-operation) Act 1990 ("the 1990 Act") and in Part 3 of the Modern Slavery Act 2015 ("the 2015 Act"). The enforcement powers in the 1990 Act are limited to tackling drug trafficking offences on British ships and the importation or exportation of controlled drugs on British ships, foreign registered vessels and stateless vessels. The 2015 Act confers enforcement powers for the purpose of tackling offences in respect of human trafficking, slavery, servitude, and forced or compulsory labour.
9. As the above provisions are directed at the enforcement of specific offences, there remains a gap in the ability of the police and other law enforcement agencies to investigate other criminal activity on ships in UK territorial waters, in international waters and in the territorial waters of other states. Chapter 4 of Part 4 of the Bill makes provision for law enforcement agencies in England, Wales and Scotland to exercise powers in a maritime

context when investigating any offence triable in England, Wales and Scotland.

10. This motion will have the effect of making separate provision for the exercise of maritime powers in Northern Ireland territorial waters for Northern Ireland offences.

UK cross jurisdictional arrest powers

11. Part 10 of the Criminal Justice and Public Order Act 1994 (the 1994 Act) contains UK wide cross jurisdictional powers of arrest with or without a warrant.
12. Section 136 of the 1994 Act makes provision for an arrest by warrant by police officers in one UK jurisdiction of a person suspected of committing an offence in another UK jurisdiction. For example, an arrest warrant issued in Northern Ireland for a suspect in Scotland may be executed by officers from the Police Service of Northern Ireland or by officers from Police Scotland. Similarly, a warrant issued in England and Wales for a suspect located in Northern Ireland may be executed by officers from a relevant police force in England and Wales or by an officer from the PSNI.
13. Section 137 of the 1994 Act makes provision for an arrest without warrant by police officers in one UK jurisdiction of a person suspected of committing an offence in that jurisdiction but who is located in another UK jurisdiction. For example, an officer in Northern Ireland can arrest without warrant a person suspected of committing an offence in Northern Ireland but who is located in England, Wales or Scotland.
14. None of the provisions of the 1994 Act allow a police officer to arrest without warrant a person in one jurisdiction who is suspected of committing an offence outside that jurisdiction. For example, a police officer in Northern Ireland cannot arrest without warrant a person in Northern Ireland who is suspected of committing an offence in England, Wales or Scotland. At present, an arrest warrant would be required to enable the PSNI to arrest the person or, alternatively, await the arrival of officers from the jurisdiction where the offence has been committed to take the suspect back to that jurisdiction.
15. The proposed amendments to the 1994 Act will only be available to officers in cases involving a serious offence. These will be set out on the face of the Bill.
16. It is expected that individuals arrested under the new power will be treated in the same way as persons arrested under warrant. The arresting force would have the power to detain but not to interview and it is anticipated

that the power would only be available in cases involving serious crime. Appropriate safeguards would be put in place to ensure that the detention period is kept to a minimum and under regular review and the detainee would have access to the same rights and entitlements as other arrested persons. Consequential amendments to the current PACE Codes of Practice will also be required.

17. In parallel with the change to arrest powers, the existing powers of entry and search upon arrest will also be amended to complement the additional arrest power but will be restricted to arrests involving indictable offences in England and Wales or in Northern Ireland. Minor consequential amendments will also be required to the 1994 Act to reflect existing provisions in the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI).

Anonymity of victims of forced marriage

18. Forcing someone into marriage is a criminal offence in Northern Ireland under section 16 of the Human Trafficking and Exploitation (Support for Victims and Criminal Justice) Act (Northern Ireland) 2015. A forced marriage is a marriage in which one or both spouses do not (or, in the case of some adults with learning or physical disabilities or mental incapacity, cannot) consent to the marriage and violence, threat or any other form of coercion is involved. Coercion may include emotional force, physical force, or the threat of physical force and financial pressure.
19. At present, a victim of forced marriage may be granted anonymity at the discretion of the court (as is the case for any other crime, with the exception of Female Genital Mutilation (FGM) and certain sexual offences where anonymity always applies unless the court considers it should not). In general terms therefore, anonymity is not automatic.
20. The proposal will make anonymity to victims of forced marriage in Northern Ireland automatic and will prohibit the publication or broadcast of any information likely to result in the victim being identified whether in traditional print/broadcast media or social media. The prohibition may be reversed if the victim applies to the court to remove it and anyone found guilty of breaching the prohibition will be subject to a fine not exceeding level 5 (£5,000) on summary conviction.

Pardons for abolished homosexual offences

21. Section 92 of the Protection of Freedoms Act 2012 provides a power in England and Wales to disregard convictions and cautions for abolished homosexual offences, ie where the activity was consensual and the other party was over the age of 16. In effect, a successful application would result in such details being deleted from relevant official records. Amendments tabled to the Bill and supported by the UK Government will mean that anyone who has their conviction or caution disregarded through these

provisions will also be pardoned for the offence. In addition the amendment will offer posthumous pardons for those with convictions or cautions for the same offences.

22. There has been widespread support in principle for the existing disregard provisions in England and Wales and for the proposed changes to allow for pardons in these cases. Although this is a devolved issue and it would be entirely proper for the Assembly to consider such legislative provision in the future, the opportunity is available now to make this important change to Northern Ireland law by using the Westminster Bill.

The effect of the provisions

23. The Legislative Consent Motion will have the effect of extending or making separate legislative provision for Northern Ireland in respect of all four policy proposals.
24. In terms of maritime powers, it will provide reciprocal enforcement powers for law enforcement officers in Northern Ireland.
25. The proposed changes to the existing UK cross jurisdictional arrest powers will provide police with the power to arrest without warrant a person in one jurisdiction who is suspected of committing a serious offence outside that jurisdiction. In effect, the arrest will be a holding power to detain the suspect until officers arrive to escort the person back to the jurisdiction for questioning in connection with the alleged offence. The detained person will have the full rights and entitlements afforded to other arrested persons.
26. The proposal for anonymity of victims of forced marriage in Northern Ireland will be automatic will have the effect of prohibiting the publication or broadcast of any information likely to result in the victim being identified whether in traditional print/broadcast media or social media.
27. The introduction of provisions for abolished offences will allow for convictions and cautions for certain consensual sexual offences (mainly gross indecency between men and buggery) where the other party to the offence was aged 16 or over to have their criminal records amended to delete those convictions and cautions, and to be pardoned for those offences.

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

28. Ordinarily, these provisions would be legislated for through the Northern Ireland Assembly. However, the Policing and Crime Bill provides an opportunity to enhance existing UK-wide maritime enforcement powers and cross jurisdictional arrest powers. This will ensure a consistent and seamless approach to the provision of these additional powers across all UK police forces and other law enforcement bodies.

29. In relation to the proposal for anonymity for victims of forced marriage, the Department is of the view that the extension of these provisions to Northern Ireland will provide important and early support to victims of forced marriage in Northern Ireland.
30. The Bill also provides an early opportunity to introduce similar provisions for disregarding abolished sexual offences that have been in place in England and Wales since 2012, and to make provision at the same time for pardons in these circumstances.

Consultation

27. Time constraints imposed by the Bill timetable have prevented a full public consultation on the policy proposals. However, consultation has taken place with key stakeholders in addition to detailed briefing being provided by the Department to the Northern Ireland Assembly's Justice Committee. There has not been any time to carry out any form of consultation on the pardons for abolished offences.

Human Rights and Equality

28. It is considered that the proposed provisions would be beneficial from a human rights and equality perspective. The UK-wide enforcement powers would assist in the fight against crime across all UK jurisdictions. The pardon provisions would provide for equality of treatment with England and Wales.

Financial Implications

29. The maritime enforcement and cross jurisdictional arrest powers may involve some operational costs for the police but these are likely to be minimal and will be met from existing budgetary provision. It has not been possible to investigate fully the financial implications of the pardon proposal but costs are not expected to be significant.

Summary of Regulatory Impact

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

Engagement to date with the Committee for Justice

31. Officials provided oral and written briefing to the Committee at its meeting on 15 September and further written clarification which the Committee considered at its meetings on 22 and 29 September and 6 October. The pardon proposals are only now being shared with the Committee given the late tabling of amendments to the Bill.

Conclusion

32. The view of the Minister of Justice is that, in the interests of effective law enforcement, and for the application of the law in a fair and equitable

manner, the Assembly should support the terms of the draft legislative consent motion as set out in paragraph 1 of this memorandum.

Department of Justice
November 2016