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**From: Karen Jardine  
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**Date: 19 January 2016**

**To: Kathy O'Hanlon - Clerk to the Committee for OFMDFM**

**Subject: Committee for Justice EU Priorities for 2016 and Report on EU work undertaken in 2015**

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In December 2015 the Committee for Justice considered correspondence from the Committee for the Office of the First Minister and deputy First Minister requesting a report from each statutory committee on EU Priorities identified for 2016, and the work undertaken on EU Priorities identified for 2015; and agreed that a draft report should be prepared for consideration.

At its meeting on 14 January the Committee for Justice considered the draft report on its EU Priorities for 2016 and the draft report on its activity on 2015 EU Priorities, and agreed to send it to the Committee for OFMDFM.

Members also noted that, as this Assembly mandate is due to conclude in March, the EU Priorities suggested for 2016 are primarily highlighted as suggested areas which the incoming Committee for Justice may wish to consider in the next Assembly mandate. The Committee therefore also agreed that the report on EU Priorities would be included as part of its legacy report for the 2011-2016 mandate.

**Karen Jardine  
Senior Assistant Clerk to the Committee for Justice**

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## **EUROPEAN COMMISSION WORK PROGRAMME 2016 – COMMITTEE PRIORITIES**

### **COMMITTEE FOR JUSTICE**

The Committee for Justice has considered the 2016 European Commission Work Programme (CWP) which was adopted by the European Commission in October 2015. This Assembly mandate is due to conclude in March 2016, at which point the current Committee for Justice will dissolve. Consequently, whilst some of the priorities identified will fall to the current Committee for consideration, they are primarily highlighted as suggested areas which the incoming Committee for Justice may wish to consider in the next Assembly mandate.

### **BACKGROUND**

The 2016 Commission Work Programme highlights the importance of new initiatives in delivering against the ten priorities outlined by the President of the European Commission President Juncker in 2014 which includes Justice and Fundamental Rights.

### **UK's participation as Member State in EU measures on Justice and Home Affairs**

The Lisbon Treaty (ratified by all Member States of the European Union including the UK in December 2009) established the principle of increased legal co-operation based upon 'mutual recognition'. This is predicated upon Member States acknowledging that the decisions adopted by other legal systems in other Member States are applicable. The aim of this is to enhance mutual legal assistance between Member States and, where possible, provide a minimum standard of protection to EU citizens in civil and criminal proceedings.

The UK's participation as a Member State in EU measures on Justice and Home Affairs is governed by Protocol 19 to the Treaty on the European Union (TEU) and by Protocol 21 on the Functioning of the European Union (TFEU). The UK negotiated an opt-in protocol within the Treaty which enables the UK Government to decide within three months of an EU initiative relating to Justice and Home Affairs being published, whether to opt-in. In this regard the UK Government is required to seek and include the views of the devolved administrations and Justice Ministers are asked to consider implications for their region. The Committee for Justice previously requested sight of all EU legislative proposals requiring a UK opt-in decision at the earliest opportunity and, as far as possible, before the Minister of Justice confirms agreement or otherwise to enable it to submit opinions.

Article 68, TFEU sets out that the European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice. In this regard, the Stockholm programme (2010 – 2014) has now expired. The European Council at its meeting on 26/27 June 2014, set out its strategic guidelines<sup>1</sup> for legislative and operational planning for the 2015-2020 period. These guidelines will form the post-Stockholm Programme 2015-2020.

The Department of Justice advised in a written update in November 2014, that many of the key policy areas in the strategic guidelines address non-devolved matters such as migration, borders and asylum. However, the Committee for Justice will keep a watching brief on the post-Stockholm Programme 2015-20 as it is progressed by the European Commission.

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<sup>1</sup> European Council, *Strategic guidelines for EU Justice and Home Affairs to 2020 - (a) Commission Communication: The EU Justice Agenda for 2020 — Strengthening Trust, Mobility and Growth within the Union & (b) Commission Communication: An open and secure Europe: making it happen*

## COMMITTEE FOR JUSTICE EUROPEAN PRIORITIES FOR 2016

The following European priorities are proposed for consideration by the Committee for Justice in 2016.

### ➤ **Implementation of the European Agenda on Security**

The implementation of the European Agenda on Scrutiny aims to ensure greater co-operation on security matters between member States, and includes a proposal to amend the Framework Decision on terrorism, improved rules on firearms and a proposal on combatting fraud and counterfeiting on non-cash means of payment.

**Action:** The Committee has already started to consider proposed amending Firearms Directive 91/477/EEC which aims to lay down the minimum requirements that Member States should impose as regards the acquisition and possession of the different categories of firearms and regulates the conditions for the transfer of firearms across Member States, while granting more flexible rules for hunting and target shooting. The Department of Justice has undertaken a targeted consultation on the proposals, and engaged with the Committee on the views of stakeholders. Some of the provisions may require legislation and the Committee will wish to continue to monitor engagement between the Department of Justice and the Home Office in this regard, or any other proposed legislation relating to the European Agenda on Security and consider any developments as they arise.

### ➤ **UK Participation in the Prüm Decisions**

In December 2015 the House of Commons European Scrutiny Committee produced a report to inform a parliamentary debate on UK participation in the Prüm Decisions. These include measures which enable police forces across the European Union to access each other's databases containing DNA profiles, fingerprints and vehicle registration records in order to prevent and investigate crime. Although the UK does not currently participate in these measures, the Government has now recommended that it should, and a debate on the matter was held in the House of Commons on 8 December 2015.

**Action:** Participation in Prüm will require appropriate legislation to be brought forward by the UK Government, and may also involve a Legislative Consent Motion to enable the relevant provisions to apply to Northern Ireland. The Committee will wish to consider policy and legislative developments in this area as they are brought forward, and has recently requested an update from the Department of Justice in this regard.

### ➤ **Human Trafficking**

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act received Royal Assent in January 2015. The Act highlighted the issue of human trafficking in Northern Ireland and was introduced to provide Northern Ireland with a more robust legal framework in relation to the prosecution of traffickers and support for victims. The Act also sought to achieve improved compliance with international obligations under the Council of Europe Convention on Action against Trafficking in Human Beings and the European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. It is expected that the Department will bring forward secondary legislation to implement remaining provisions in the Act and the provisions of the Modern Slavery Act 2015 which extend to Northern Ireland.

**Action:** The Committee will wish to continue to monitor the implementation of the Act, and the Department of Justice's Human Trafficking and Exploitation Strategy for Northern Ireland. The Committee may also wish to keep a watching brief on policy and legislative developments emanating from the Commission's strategic priorities document in the area of human trafficking.

➤ **Fighting Money Laundering**

The Department has advised that it is currently working to introduce new Codes of Practice in relation to the Proceeds of Crime Act (POCA) which, along with further amendments to legislation, will continue to strengthen capabilities in this area. It is anticipated that the new Codes will be in operation early in 2016, subject to Assembly approval.

**Action:** The Committee will wish to monitor any policy proposals and new Codes of Practice relating to the fight against money laundering.

➤ **EU Directive on Special Safeguards in Criminal Proceedings for Suspected or Accused Persons who are Vulnerable**

The European Commission has published a proposal for a Directive on procedural safeguards for children suspected or accused in criminal proceedings. This aims to set common minimum standards through the EU on the rights of children in criminal proceedings or who are subject to a European Arrest Warrant. There are a number of areas relating to this proposal for which agreement between the European Parliament and the Council remains outstanding. The Department has advised that the proposed Directive and Commission Recommendation may require amendments to current PACE legislation, should the UK opt-in to this arrangement.

**Action:** The Committee will wish to consider any policy and legislative proposals related to the proposed EU Directive, and monitor areas of concern to the UK, and consequently Northern Ireland.

➤ **EU Agency for Law Enforcement Cooperation and Training (Europol)**

The UK Government chose to opt out of the proposals in 2013 to merge CEPOL (European Police College) and EUROPOL, and to increase data sharing to combat cross-border crime. However, post-adoption opt-in is under consideration depending on the level of obligations placed on Member States resulting from the Regulation.

**Action:** The Committee will wish to consider any policy and legislative proposals related to this proposal, and monitor areas of concern to the UK, and consequently Northern Ireland.

➤ **EU Passenger Name Record (PNR)**

The European Commission Work Programme includes a proposal for a Directive of the European Parliament and the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. An original proposal from 2011 on the storage and sharing of international passenger data has been revived following an increase in international terrorism. The UK Government was planning to opt-in to the 2011 proposal before it was shelved.

**Action:** The Committee will wish to consider any policy and legislative proposals related to the proposed EU Directive, and monitor areas of concern to the UK, and consequently Northern Ireland.

➤ **UK's opt-in decision**

The Committee will continue to scrutinise all EU legislative proposals requiring a UK opt-in decision.

**The Committee may also wish to continue to monitor progress on a number of other issues:**

- Implementation of the Victims Directive
- Progress to Access EU Funding Streams
- Framework for Administrative Measures for the Freezing of Funds, Financial Assets and Economic Gains of Persons and Entities Suspected of Terrorist Activities inside the EU
- Fighting Cigarette Smuggling
- Initiatives on Firearms: Reducing Gun Crime in Europe
- Establishment of a European Public Prosecutor's Office (EPPO) to Protect the Financial Interests of the Union
- Nuclear insurance and liability

## COMMITTEE ACTIVITY ON 2015 EUROPEAN PRIORITIES

In the *Report on Assembly Committee Priorities for European Scrutiny in 2015*, the Committee for Justice identified a range of EU specific issues for consideration; the work undertaken by the Committee in this regard is detailed as follows:

➤ **Simplify access to justice; promote effective remedies and use of technological innovations including the use of e-justice**

This is one of the policy measures that the European Commission outlined in its strategic guidelines document for EU Justice and Home Affairs to 2020<sup>2</sup>.

**Activities undertaken:**

During 2015 the Committee scrutinised the Justice Bill which proposed an expansion of the provision for the use of live video link facilities in courts to include committal proceedings, certain hearings at weekends and public holidays and proceedings relating to failure to comply with certain order or licence conditions. It was also proposed that live links would be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation. The Committee noted that the provisions would not change a patient's or defendant's entitlement to be present at a hearing nor alter the right to consult privately with their legal representative before, during or after a live link. In its scrutiny of the provisions the Committee received comments largely focused on wider issues relating to the use of live links generally, particularly with regard to children and young people, and the impact on their ability to understand and participate in proceedings, and give informed consent and the ability of a defendant to access legal representation and communicate with their legal representative.

In March 2015 the Committee produced its *Report on the Justice Bill*.<sup>3</sup> Having considered the issues raised in the evidence, the benefits of extending the use of live links and the Department of Justice's assurances regarding the various legal requirements set out in statutory frameworks for the use of live links which operate under the authority and supervision of the courts and judiciary, the Committee agreed that it was content with Clauses 44 to 49 and with the proposed amendment to Clause 46 to ensure a consistency of approach with respect to safeguarding arrangements. The Justice Bill went through its consideration stages in June 2015 passing its Final Stage on 30 June, with Royal Assent received on 24 July 2015.

➤ **Reinforce the protection of victims**

This is another of the Commission's policy areas outlined in its strategic guidelines document. EU Directive (2012/29/EU) establishes minimum standards on the rights, support and protection of victims of crime. The Committee already made extensive recommendations during 2012 in regards to the formulation of Victim and Witness Charters; and the Department had indicated its intention to introduce the Victim Charter on an administrative basis by the end of 2014, and place it on a statutory footing towards the end of 2015, to coincide with the implementation of the EU Victims Directive.

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<sup>2</sup> European Council, *Strategic guidelines for EU Justice and Home Affairs to 2020 - (a) Commission Communication: The EU Justice Agenda for 2020 — Strengthening Trust, Mobility and Growth within the Union & (b) Commission Communication: An open and secure Europe: making it happen*

<sup>3</sup> Committee for Justice, [Report on the Justice Bill \(NIA 240/11-16\) March 2015](#)

### **Activities undertaken:**

- Part 4 of the Justice Bill, which the Committee scrutinised in early 2015, sought to improve service and facilities for victims and witnesses by creating a new statutory Victim and Witness Charter; through the introduction of a legal entitlement to be afforded the opportunity to make a victim statement; and proposals for video link powers being expanded between courts and a number of new locations. The Bill received Royal Assent on 24 July 2015.

Following the introduction of the necessary provisions through the Justice Act the Department brought forward regulations to bring the Victim Charter into operation on a statutory footing. The Committee considered the policy proposal behind the regulations in September 2015 and formally agreed The Victim Charter (Justice Act (Northern Ireland) Order (Northern Ireland) 2015 at its meeting on 1 October 2015.

- **Human Trafficking**

The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Bill, which highlighted the issue of human trafficking in Northern Ireland, received Royal Assent on 13 January 2015. The Act was introduced to provide Northern Ireland with a more robust legal framework in relation to the prosecution of traffickers and support for victims. The Act also sought to achieve improved compliance with international obligations under the Council of Europe Convention on Action against Trafficking in Human Beings and the European Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims.

### **Activities undertaken:**

The Committee monitored the implementation of the Act, the Department of Justice's Human Trafficking and Exploitation Action Plan 2014-15, the development of the annual strategy as outlined in the Bill and the results of a cross-border analysis of human trafficking in 2013 and 2014. The Committee also considered draft Statutory Guidance for Victims of Human Trafficking on Access to Compensation which included a draft leaflet and guidance notes to help victims of human trafficking to access compensation and complete a personal injury application form; and a proposed consultation on a draft code of practice on the exercise of maritime powers under the Modern Slavery Act 2015.

The Committee considered policy proposals on a proposed statutory rule to set out specified public authorities required to cooperate with the UK-wide Independent Anti-Slavery Commissioner; on proposed statutory rules to make provision for Slavery and Trafficking Prevention Orders and an associated notification regime.

The Committee also kept a watching brief on policy developments emanating from the Commission's strategic priorities document in the area of human trafficking.

- **Combatting serious and organised crime**

The Commission's strategic guidelines document highlighted the issue of combatting serious organised crime as a key priority area.

### **Activities undertaken:**

The Committee undertook to consider any EU policy proposals brought forward in the area of combatting serious and organised crime and the potential impact on the work of the relevant justice agencies in Northern Ireland.

➤ **Mutual recognition of decisions and judgments in civil and criminal matters**

The European Commission outlines that the smooth functioning of a true European area of justice with respect for the different legal systems and traditions of the Member States is vital for the EU. In this regard, the European Commission believes that mutual trust in one another's justice systems should be further enhanced.

**Activities undertaken:**

The Committee considered developments in this area as subordinate legislation was brought forward by the Department of Justice, including SR 2014/320 The Criminal Justice (European Protection Order) (Northern Ireland) Regulations 2014, which gives effect to Directive 2011/99/EU of the European Protection Order, the policy objective of which is to provide for the mutual recognition between EU Member States of protection measures such as restraining orders in criminal proceedings.

The Statutory Rule was considered by the Committee in January 2015, when it agreed that it had no objection to the Rule.

The Committee also considered Statutory Rule 2015/353 The Criminal Justice (European Protection Order) (Amendment) Regulations (Northern Ireland) 2015 which ensured that provisions for victims to benefit from the protection measures made against their offenders when they travel or move to other Member States, are consistent with similar provisions in England and Wales, and the proper meaning is evident.

The Statutory Rule was considered by the Committee in October 2015, when it agreed that it had no objection to the Rule.

## **OTHER EU ACTIVITY IN 2015**

### **Visit to The Hague to look at Innovation in the Justice System**

Throughout 2015 the Committee for Justice held a series of Justice Seminars to identify and discuss innovative approaches that could be adopted to improve the efficiency and effectiveness of the justice system in Northern Ireland. As part of this programme the Chairman and Deputy Chairman undertook a visit to the Netherlands in July 2015 to primarily look at the use of online dispute resolution. During the visit the Chairman and Deputy Chairman met with Europol, the Hague Institute for the Internationalisation of Law, the Dutch Legal Aid Board and the Dutch Council of the Judiciary.

### **UK's 2014 Opt-Out from the EU's Pre-Lisbon Police and Criminal Justice Measures**

Protocol 36 of the Treaty of Lisbon enabled the UK Government to decide, by 31 May 2014, whether or not the UK should continue to be bound by the approximately 130 police and criminal justice measures that were adopted by unanimity in the Council of Ministers before the Lisbon Treaty came into force, or if it should exercise its right to opt-out of them.

The opt-out would apply to all of the 130 measures, but the UK Government could apply to re-join individual measures at any time. The UK Government did exercise the opt-out and has indicated its intention to seek to re-join 35 of the measures; one of the measures included the European Arrest Warrant.



In December 2014, the Committee received confirmation that negotiations had been successfully completed and that the UK was formally opting into the 35 measures. In January 2015, the Committee noted information from the Department providing an update on the UK Government's progress in this regard.

### **EU Justice and Home Affairs Bi-annual reports**

The Committee considered 2 six-monthly up-date reports from the Department of Justice on EU Justice and Home Affairs measures. The reports summarised the current position in relation to the EU measures being dealt with by the Department of Justice, the known impact for Northern Ireland and the next steps to be taken.

### **Police and Criminal Evidence (Northern Ireland) Order 1989**

EU Directive 2010/64 lays down common minimum standards across Member States on the provision of information about rights and the charge to be given to persons suspected or accused of having committed a criminal offence, including on the right to interpretation and translation in criminal proceedings.

Having considered a draft consultation document and noted a proposed 12 week period of consultation on draft PACE Codes of Practice A-H in November 2014, the Committee subsequently considered a proposal for a Statutory Rule in March 2015, which provided for a general refresh of the PACE Codes of Practice, bringing them up to date with current policing procedures and practices, and making formal provision for EU Directive 2010/64.

The Statutory Rule was considered by the Committee in May 2015, when it agreed that it had no objection to the Rule.