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Ref: JA/PM/Justice/8892

Mr Peter May
Permanent Secretary
Department of Justice

29th April 2020

Dear Mr May,

Re: The Functioning of Government (Miscellaneous Provisions) Bill

I refer to your letter of 22 April 2020 to the Clerk of the Committee for Finance. I am surprised by some of the content thereof.

In paragraphs 6 and 7 you refer to existing provisions of the Official Secrets Act 1989 and in consequence suggest Clause 11 of my Bill does not add anything “to the overall framework of criminal law in Northern Ireland” and is unnecessary. You seem to rely on the existence of Section 5 of the Official Secrets Act 1989 as a basis for that conclusion, by saying, “the Department notes that Section 5 ... already makes it an offence for the unlawful disclosure of protected information..”

Your reference to Section 5 of the Official Secrets Act 1989 is, I believe, misplaced and misleading. You must be aware that Section 5 is restricted in its application to the disclosure of information protected against disclosure by the foregoing provisions of the 1989 Act and that “the foregoing provisions” (Sections 1-4) deal only with matters of security and intelligence (S 1), defence (S 2), international relations (S 3) and disclosure of a particular genre of information resulting in the commission of a crime (S 4). The ambit of Section 5 is very clear from subsection (5):

“(5)

For the purposes of this section information or a document or article is protected against disclosure by the foregoing provisions of this Act if—

(a) it relates to security or intelligence, defence or international relations within the meaning of section 1, 2 or 3 above or is such as is mentioned in section 3(1)(b) above; or

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(b) it is information or a document or article to which section 4 above applies;

and information or a document or article is protected against disclosure by sections 1 to 3 above if it falls within paragraph (a) above.”

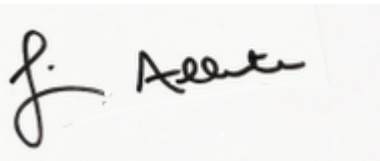
Clearly, the thrust of Clause 11 in my Bill is not directed at the above matters but at matters such as emerged in the RHI evidence of a SpAd disclosing confidential information to family members and others.

Thus, to suggest the Clause is not necessary because of the availability of Section 5 of the Official Secrets Act 1989 is, I believe, erroneous and likely to mislead.

There may be worth in your point about the proportionality of the suggested penalty, but not in the claim that Clause 11 is unnecessary.

In regard to your comments on Clause 9, at paragraphs 4 and 5 of your letter, you totally ignore the provision within that clause of the “reasonable excuse” defence which would patently cover situations such as those arising in the exigencies of the current Covid-19 crisis. I will consider if that aspect needs to be further amplified and also your point on proportionality of sentence.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Allister', is written on a light-colored background.

Jim Allister MLA

cc Clerk of Finance Committee; Clerk of Justice Committee