

**FROM THE PERMANENT SECRETARY
PETER MAY**

Rm B5.10, Castle Buildings
Stormont Estate
BELFAST BT4 3SG
Tel: 028 9052 2992
email: peter.may@justice-ni.x.gsi.gov.uk

via email: Karen.Cameron@party.niassembly.gov.uk

Jim Allister MLA
38 Henry Street
Harryville
Ballymena
Co Antrim
BT42 3AH

18 May 2020

Dear Mr. Allister

THE FUNCTIONING OF GOVERNMENT (MISCELLANEOUS PROVISIONS) BILL

Thank you for your letter of 29 April 2020, in response to my correspondence of 22 April 2020 to the Clerk of the Committee for Finance on the offences and penalties aspects of the above Bill.

The Department of Justice recognises that Section 5 of the Official Secrets Act 1989 must be read in conjunction with the preceding sections, which deal with matters of security and intelligence; defence; international relations; and disclosure of information resulting in the commission of other crimes.

At the time of the Department's initial consideration of your Bill, because the 'for financial or other potential benefit' aspect of Clause 11 is not defined, it was not clear whether you intended the clause to capture financial benefit secured through criminal activity such as fraud, theft, or, in extreme cases, blackmail or extortion, that might be perpetrated upon the disclosure or receipt of information.

Were that to have been the case, Section 4 of the 1989 Act would be engaged and the offence of unlawful disclosure under Section 5 would be triggered and the offence in your Clause 11 may not be needed. I appreciate that this could have been made clearer in my original letter to the Committee for Finance but trust that this clarification sets out the Department's thinking.

However, upon receipt of your letter, it is now apparent that you do not intend to capture financial benefit as a result of other crimes as part of your clause. For the avoidance of any further doubt, this may be something that you might wish to consider making explicitly clear moving forward.

I understand that the Department of Finance has now provided the Committee for Finance with substantive commentary on the Bill, which includes a number of observations on the offences and penalties provisions. The Department of Justice will be happy to consider any revisions to clauses 9 and 11 as a result of the Committee's ongoing scrutiny of the Bill, particularly in relation to the proportionality of the proposed sentences, which you have indicated you are prepared to revisit.

To assist with their deliberations, I propose to share a copy of this letter with both the Committee for Finance and the Committee for Justice.

Yours sincerely



cc Clerk of Committee for Finance; Clerk of Committee for Justice