

## **LEGISLATIVE CONSENT MEMORANDUM**

### **AIR TRAFFIC MANAGEMENT AND UNMANNED AIRCRAFT BILL**

#### **Draft Legislative Consent Motion (LCM)**

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

***“That this Assembly agrees the extension to Northern Ireland of certain provisions within the Air Traffic Management and Unmanned Aircraft Bill relating to the interference with unmanned aircraft (drones) over places of detention.”***

#### **Background**

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Air Traffic Management and Unmanned Aircraft Bill ('the Bill') was introduced in the House of Lords on 9 January 2020 and is currently at Lords Report Stage there. The latest version of the Bill can be found at:

<https://publications.parliament.uk/pa/bills/lbill/58-01/098/5801098.pdf>

#### **Summary of the Bill and its policy objectives**

3. The Bill provides the Secretary of State for Transport with the power to direct airports to provide certain information to the Civil Aviation Authority, it contains provisions to modernise the licensing framework for air traffic services, it provides police with new powers to allow them to better enforce unmanned aircraft provisions in the Air Navigation Order 2016 (ANO 2016) and it amends the Police Act 1997 in two ways, one, to enable the use of counter-aircraft measures to detect and prevent the use of drones to commit certain ANO 2016 and other prison related offences; and two, it enables the Civil Nuclear Constabulary and custodial institutions in England & Wales, Scotland and Northern Ireland to authorise applications from their operational staff to use counter-unmanned aircraft measures to detect and prevent offences set out in the Bill. In doing so the Bill creates new powers that will allow the Department of Justice to designate which officials of the Northern Ireland Prison Service and Youth Justice Agency may authorise counter-unmanned aircraft measures and who in turn will be able to give such authorisations but only in situations where these authorisations are for the purpose of preventing or detecting an offence under the Prison Act (NI) 1953.

#### **Provisions which deal with a Devolution Matter**

4. The provisions of the Bill extend to the whole of the United Kingdom and relate to matters reserved to the UK Parliament. The Bill falls within “civil aviation” which is a reserved category under Schedule 3 to the Northern Ireland Act

1998. The police powers in the Bill aim to tackle the unlawful use of unmanned aircraft and are ancillary to the overall unmanned aircraft regulation strategy, which, as part of civil aviation, is reserved. However, in respect of authorisations to use counter-unmanned aircraft measures it is the view of the Department for Transport that these particular provisions engage the LCM process in the Northern Ireland Assembly because the relevant provisions in the Bill confer a new function on the Department of Justice.

### **The position in other devolved administrations**

5. On the new function point set out in paragraph 4 above LCMs are being sought in Northern Ireland and Scotland.

### **Reasons for making the Provisions**

6. The Department is of the view that there is a sound and justifiable case for extending to Northern Ireland certain provisions within the Air Traffic Management and Unmanned Aircraft Bill. Unmanned aircraft pose a security threat to prisons and have the potential to place the public at risk. In England and Wales particularly, drones are already being used to smuggle contraband such as drugs, weapons and mobile phones into prisons as authorities get more adept at preventing unauthorised articles coming in through visits and other more traditional methods of entry. These items place both prisoners and staff at risk, they can undermine rehabilitation programmes and threaten the good order and security of establishments. Their importation into prisons is also often organised and funded by criminal networks that operate both within the custodial environment and in the community. It is also possible that drones may be used in future to facilitate an escape, again posing a direct threat to public safety and prison security.
7. Although incidents of drone use in Northern Ireland in the vicinity of places of detention have been rare the Department of Justice is keen to take the opportunity this Bill is presenting, and which covers reserved matters almost exclusively, to future proof this jurisdiction against a rise in drone activity for nefarious purposes.

### **The effect of the provisions**

8. The Legislative Consent Motion will enable senior Department of Justice staff (rather than senior police officers) to authorise applications from their operational respective staff to interfere with unmanned aircraft (a drone) over a place of detention but only in situations where this authorisation is for the purpose of preventing or detecting an offence under the Prison Act (NI) 1953.

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

9. The provisions of the Bill extend to the whole of the United Kingdom and relate to matters reserved to the UK Parliament. The Bill falls within "civil aviation" which is a reserved category under Schedule 3 to the Northern Ireland Act 1998.

## **Consultation**

10. A public consultation took place over an 8 weeks period from early January 2020 using the Department of Justice website. No responses were received. Consultation has also taken place with the Department for Infrastructure.

## **Human Rights and Equality**

11. No human rights or equality issues have been identified.

## **Financial Implications**

12. It is possible that some costs could be incurred by the Northern Ireland Prison Service. However, these are likely to be minimal and will be met from existing budgetary provision.

## **Summary of Regulatory Impact**

13. There will be little or no impact on the business or voluntary sectors.

## **Engagement to date with the Committee for Justice**

14. The Minister of Justice provided a written briefing to the Chair of the Committee. An oral briefing was due to be provided to the Committee by a Departmental official on Thursday 19 March 2020. However, due to COVID 19 this did not take place. The Committee subsequently considered the matter at its meeting of Thursday 14 May 2020.

## **Conclusion**

15. The Minister of Justice is of the view that the Assembly should support the terms of the draft legislative consent motion as set out in paragraph 1 of this memorandum.

**Department of Justice**

**21 May 2020**