

LEGISLATIVE CONSENT MEMORANDUM

DOMESTIC ABUSE 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 the relevant provisions of the Domestic Abuse Bill, introduced in the House of Commons on 3 March 2020, relating to the provisions to extend the power of the courts in Northern Ireland to try in the home jurisdiction certain sexual and violent offences which have been committed abroad, so far as these matters fall within the legislative competence of the Assembly.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Justice under Standing Order 42A(2). The Domestic Abuse Bill was introduced in the House of Commons on 3 March 2020. The Bill can be found at:

<https://services.parliament.uk/Bills/2019-21/domesticabuse/documents.html>

Summary of the Bill and its policy objectives

3. The majority of the provisions contained in the Bill apply to England and Wales only. The Explanatory Notes accompanying the Bill set out the UK Government’s view of its purpose and main functions.

4. The main purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children provided by other statutory agencies. However, Part 6 of the Bill seeks to make provision to allow the UK Government to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The UK Government describes Part 6 of the Bill as follows:

Part 6 extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.

<https://publications.parliament.uk/pa/bills/cbill/58-01/0096/20096.pdf>

5. Part 6 of the Bill therefore makes provision for the whole of the UK, including Northern Ireland, to provide courts with ‘extra-territorial jurisdiction’ over relevant offences as required by the Council of Europe Convention on preventing and combating violence against women and domestic violence (commonly known as the Istanbul Convention).

6. The Istanbul Convention is focussed on preventing violence against women, protecting victims and prosecuting accused offenders. The Convention opened for signature on 11 May 2011. The United Kingdom became a signatory to the Convention on 8 June 2012, however, formal ratification remains pending.

7. The Convention establishes a series of offences characterised as violence against women. Article 44 of the Convention requires States which ratify the Convention to take ‘extra-territorial jurisdiction’ (“ETJ”) over these offences, to enable prosecution of its nationals and those habitually resident in the state when they commit one of these offences anywhere in the world. ETJ refers to the extension of a country’s criminal law to conduct prosecution of an offence which takes place outside that country and is the exception to the general principle that the criminal law usually has effect only with respect to the jurisdiction within which a crime is committed. The measures in the UK Domestic Abuse Bill allow for formal ratification of the Convention by providing for such ETJ in England, Wales, Scotland and Northern Ireland.

8. Giving effect to the ETJ requirements of the Convention will allow relevant offending behaviour to be prosecuted in our domestic courts when it occurs wholly or partly outside the United Kingdom when the offender is habitually resident in Northern Ireland or a UK national.

9. The courts here currently have ETJ with regard to a number of offences including forced marriage, female genital mutilation, sex offences against children, murder and manslaughter and provision is being sought in the Domestic Abuse and Family Proceedings Bill currently before the Assembly to include the new domestic abuse offence. The Westminster Bill prescribes those further offences for Northern Ireland that need to have ETJ provision in order to comply with the Convention. The list of offences is contained in Clause 61 and Part 3 of Schedule 2 to the Bill, namely:

Putting people in fear of violence	Article 6 Protection from Harassment (Northern Ireland) Order 1997
Murder and manslaughter	common law
Actual bodily harm	section 47 Offences Against the Person Act 1861
Grievous bodily harm	section 20 Offences Against the Person Act 1861
Grievous bodily harm with intent:	section 18 Offences Against the Person Act 1861
Child Destruction	section 25 Criminal Justice (Northern Ireland) Act 1945
Administering poison or noxious thing so as to endanger life or inflict grievous bodily harm	section 23 Offences Against the Person Act 1861
Administering poison or noxious thing with intent to injure, aggrieve or annoy another person	section 24 Offences Against the Person 1861
Rape	Article 5 Sexual Offences (Northern Ireland) Order 2008
Assault by penetration	Article 6 Sexual Offences (Northern Ireland) Order 2008
Sexual assault	Article 7 Sexual Offences (Northern Ireland) Order 2008
Causing a person to engage in sexual activity without consent:	Article 8 Sexual Offences (Northern Ireland) Order 2008

Provisions which deal with a Devolution Matter

10. A summary of the clauses in the Bill that require legislative consent is as follows (clause numbers relate to the print of the Bill on introduction):

Amendments relating to offences committed outside the UK

- **Clauses 61, 62 and Part 3 of Schedule 2**

Clause 61 covers a number of the violent offences being added for ETJ. Clause 62 introduces Schedule 2, which amends other legislation to allow the courts here to take extra-territorial jurisdiction over certain other offences under the law of Northern Ireland.

Commencement

• **Clause 72(4)**

This clause confers commencement-related powers on the Department of Justice.

Reasons for making the Provisions

11. Although the Bill applies largely to England and Wales, it also provides courts in Northern Ireland with extra-territorial jurisdiction (ETJ) over offences covered by the Council of Europe Convention on preventing and combating violence against women and domestic violence, commonly known as the “Istanbul Convention”. The Bill’s main domestic abuse provisions will of course apply only to England and Wales. The provisions relating to Northern Ireland set out the offences which, if committed abroad, by a UK national or a person resident in NI, can be tried in the courts here. These represent the equivalent offences in Northern Ireland to those being added for England and Wales and Scotland, except in relation to domestic abuse and stalking. ETJ provision for the proposed NI domestic abuse offence is contained in the Domestic Abuse and Family Proceedings Bill, currently before the Assembly. A Stalking Bill is also scheduled for introduction to the Assembly later this year and it too will contain provisions for prosecution of offences which occurred overseas. In the meantime the offence of putting people in fear of violence contained in the Protection from Harassment (NI) Order 1997 and the inclusion of sexual and violent offences is considered by the UK Government to be sufficient to meet the requirements of the Convention and allow for ratification.

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

12. While the ability to make these changes is within the legislative competence of the Assembly, the Executive has considered it appropriate that these amendments are enacted within the Bill. The provisions carried in this Bill will cover all three jurisdictions of the UK and will enable the UK Government to ratify the Istanbul Convention.

13. The Bill has already been introduced in Parliament and, with the legislative constraints in the current mandate, it would not be possible to bring equivalent provision via an Assembly Bill within the same timescale. The Domestic Abuse Bill in the Assembly is unlikely to reach completion until after the Westminster Bill, thereby preventing UK ratification of the Convention until a later date.

14. Although it would be possible to legislate for the devolved ETJ areas through a Bill in the Assembly, that would take more time and legislating through this UK Bill will ensure that the UK as a whole is in a position to formally ratify the Istanbul Convention quickly.

Consultation

15. The UK Government consulted on proposals for the draft Bill in March 2018. The consultation response can be found at the following link:

<https://www.gov.uk/government/publications/domestic-abuse-consultation-response-and-draft-bill>

The Department has also consulted with stakeholders within the criminal justice system to make them aware of the proposed changes.

Human Rights and Equality

16. The provisions of the Bill which extend to Northern Ireland are considered to be compliant with section 24 of the Northern Ireland Act 1998, including EU Law and Convention Rights as defined in the Human Rights Act 1998. None of the provisions were deemed to have required an equality impact assessment.

Financial Implications

17. The provisions of the Bill which extend to Northern Ireland have limited financial implications. The E&W provisions are estimated at £6.8m; Scotland as £0.7m. It is estimated that the provisions of the Bill which extend to Northern Ireland could add £580k to the annual costs of the criminal justice system based on an additional ten cases being tried in the courts here for offences committed outside the jurisdiction.

Summary of Regulatory Impact

18. No regulatory impact.

Engagement to date with the Committee for Justice

19. Briefing was issued to the Justice Committee on 20 April and was considered at its meeting on 30 April 2020. The Committee raised no issues of concern.

Conclusion

20. The view of the Minister is that it is preferable, in the interests of appropriate and timely process and clear legislation, and given the UK-wide requirement for ratification of the Istanbul Convention, that the relevant provisions which fall within the legislative competence of the Assembly should be considered by the UK Parliament in order to ensure that the UK is in a position to ratify the Convention without undue delay.

Department of Justice

26 May 2020