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Mervyn Storey MLA
Chairperson, Committee for Justice
Room 242
Parliament Buildings
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1 December 2021

Dear Mervyn,

EXTRACTION OF INFORMATION FROM ELECTRONIC DEVICES – POLICE CRIME SENTENCING AND COURTS BILL – LEGISLATIVE CONSENT MOTION

Considerable progress has been made on the draft code of practice for the Extraction of Information and the Attorney General and the NIHRC continue to be engaged on this matter. The DALO wrote to the Committee Clerk on 15 November advising that following receipt of a further iteration of the code from the Home Office, my Department has again sought the views of both the NIHRC and the Attorney General and a response from both is currently awaited. I will ensure that colleagues are updated once these responses are received.

I also explored with the Home Office, whether the provisions could be included in the Bill but not commenced until any outstanding issues in relation to the code have been resolved. The introduction and support for a LCM for these clauses would be subject to Executive agreement.

It is important to stress that the Information Commissioner's Office (ICO) report on mobile phone data extraction by police in Northern Ireland, published in June 2021, recommended that the legislative framework on data extraction should be strengthened to ensure clarity for victims, witnesses and offenders, to address inconsistencies between forces and to clarify the lawful basis for such extraction. This ICO report clearly strengthens the case for the extraction of information from electronic devices to be placed on a statutory footing in this jurisdiction. I have included a link to the report for your information.

<https://ico.org.uk/media/about-the-ico/documents/2620094/ico-investigation-mpenorthern-ireland-202106.pdf>

I hope you agree that the case for including NI in these provisions has been strengthened by the developments in the code and the recommendations of the ICO report.

The Rt Hon Kit Malthouse MP has now confirmed that there will be a public consultation on the code of practice for these powers. This consultation will be launched once the PCSC Bill has achieved Royal Assent and an advanced copy of the consultation document and the updated code will be shared with me as Justice Minister before the consultation begins. Significantly he has confirmed that the Provisions in Chapter 3 of Part 2 of the Bill will not be commenced until the consultation on the draft code has been completed and the responses to the consultation have been considered. If necessary clause 176(2) of the Bill enables commencement regulations to appoint different days in different areas so we will not be bound by UK wide commencement. If agreement is reached to proceed with the LCM I will write to Kit Malthouse confirming that the provisions in so far as they relate to Northern Ireland should not be commenced without the agreement of the Assembly.

It would not be possible to achieve equivalent legislation via an Assembly Bill within the same timescale and as the Bill is UK wide it will enable us to ensure consistency.

The NIHRC has had the opportunity to comment on the draft legislation and continues to provide comment on each iteration of the draft code of practice.

Given the time constraints I have written to Executive colleagues in parallel with this correspondence. Ideally I would have sought Committee views first but, given the Bill is at an advanced stage, time is of the essence.

I am now seeking your views on proceeding with a LCM on the basis that the provisions on the extraction of information from electronic devices would extend to Northern Ireland but not be commenced until such times as the code has been finalised. An urgent response is required as the Bill continues to make its passage through Parliament. I have also enclosed a list of the original provisions in the draft Bill and the provisions as amended and likewise for the draft code of practice.

I would be grateful if you would share with this update with Committee colleagues.

NAOMI LONG MLA MINISTER OF JUSTICE ENC