



Northern Ireland
Assembly

Committee for Justice

Report on the Supplementary Legislative Consent Motion: Police, Crime, Sentencing and Courts Bill

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Powers and Membership

Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- approve relevant secondary legislation and take the Committee Stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on matters brought to the Committee by the Minister of Justice.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Mr Mervyn Storey MLA (Chairperson) ¹
- Ms Sinéad Ennis MLA (Deputy Chairperson) ²
- Mr Doug Beattie MLA
- Ms Sinéad Bradley MLA ³
- Ms Jemma Dolan MLA ⁴
- Mr Robin Newton MLA ⁵
- Ms Emma Rogan MLA ^{6 7}
- Mr Peter Weir MLA ⁸
- Ms Rachel Woods MLA

¹ With effect from 14 June 2021, Mr Mervyn Storey replaced Mr Paul Givan as Chairperson

² With effect from 2 August 2021, Ms Sinéad Ennis replaced Ms Linda Dillon as Deputy Chairperson

³ With effect from 26 May 2020, Ms Sinéad Bradley replaced Mr Patsy McGlone

⁴ With effect from 16 March 2020, Ms Jemma Dolan replaced Mr Pat Sheehan

⁵ With effect from 21 June 2021, Mr Robin Newton was appointed as a Member of the Committee

⁶ With effect from 17 February 2020, Ms Martina Anderson replaced Mr Raymond McCartney

⁷ With effect from 9 March 2020, Ms Emma Rogan replaced Ms Martina Anderson

⁸ With effect from 21 June 2021, Mr Peter Weir replaced Mr Paul Frew

List of Abbreviations and Acronyms used in this Report

AGNI	Office of the Attorney General for Northern Ireland
ECHR	European Convention on Human Rights
ICO	Information Commissioner's Office
LCM	Legislative Consent Motion
MLA	Member of Legislative Assembly
MP	Member of Parliament
NICCY	Northern Ireland Commissioner for Children and Young People
NIHRC	Northern Ireland Human Rights Commission
PCSC Bill	Police, Crime, Sentencing and Courts Bill
PSNI	Police Service of Northern Ireland
SHPO	Sexual Harm Prevention Order
SRO	Sexual Risk Order
UK	United Kingdom

Background

1. The Police, Crime, Sentencing and Courts (PCSC) Bill was introduced in the House of Commons on 9 March 2021. [Read the latest version of the Bill on the parliament.uk website.](#)
2. The Committee has already considered provisions in the PCSC Bill that the Assembly agreed by way of a Legislative Consent Motion (LCM) should be extended to Northern Ireland. Those provisions were:
 - amendments to the Crime (Overseas Production Orders) Act 2019;
 - application of Section 29 of the Petty Sessions (Ireland) Act 1851 (which includes provision for the execution of process of English Courts in Northern Ireland) to the provisions in the Bill enabling a judge in England and Wales to make an order authorising the police to obtain information about the location of human remains outside of a criminal investigation;
 - provisions to place the National Driver Offender Retraining Scheme on a statutory footing;
 - cross jurisdictional enforcement of Sexual Harm Prevention Orders (SHPO) and Sexual Risk Orders (SRO); and
 - amendment to the Proceeds of Crime Act 2002 to bring electronic money and payment institutions within the scope of account freezing and asset forfeiture powers in Northern Ireland.
3. The Committee agreed its report on the LCM for these provisions on 4 November 2021 and the LCM was approved by the Assembly on 23 November 2021.
4. The Committee had undertaken initial consideration of the provision relating to data extraction from mobile devices in its consideration of the earlier LCM. However, the provision had been excluded from that LCM and the Committee had been advised that the Minister of Justice may bring the issue back to the

Executive when the Code of Practice required to support the provision had been drafted and consulted on. The Committee had continued to pursue this matter with the Department following the completion of its report on the other provisions that were included in the LCM.

5. The Department has liaised with the Northern Ireland Human Rights Commission (NIHRC) and the Office of the Attorney General for Northern Ireland (AGNI) on the draft Code of Practice. Their input has been shared with the Home Office and the Department believes this has clearly influenced the drafting of the Code. The NIHRC and the AGNI however continue to have concerns and the Department has indicated to the Home Office that it will require all relevant concerns to be addressed, as far as possible, prior to the provisions in the Bill coming into force in Northern Ireland.

6. As the PCSC Bill is now at an advanced stage, it is unlikely that the Code will be amended further before Royal Assent is given. The Minister therefore sought and obtained the Executive's support for a conditional LCM to extend the provisions relating to data extraction from digital devices in the Police, Crime, Sentencing and Courts Bill to Northern Ireland.

Purpose of the Legislative Consent Motion

7. A Legislative Consent Memorandum for a Draft Supplementary Legislative Consent Motion for the Police, Crime, Sentencing and Courts Bill was laid by the Department of Justice on 7 February 2022. It proposes the extension of the provisions in Chapter 3 of Part 2 of the Bill insofar as they relate to Northern Ireland and that commencement of the provisions is conditional on Assembly agreement to consider whether the Code of Practice, following public consultation, complies with protected rights and requirement. The Assembly's consent is sought in respect of the provisions set out below.

Data Extraction Powers

8. The provisions included in the PCSC Bill are to address a recommendation by the Information Commissioner's Office (ICO) in June 2020⁹ that the legislative framework should be strengthened to ensure clarity for victims, witnesses and offenders to address inconsistencies between forces and clarify the lawful basis for data extraction. The Department advises that a separate report on mobile phone data extraction by police in Northern Ireland¹⁰ further recommended that the legislative framework on data extraction should be strengthened to ensure clarity for victims, witnesses and offenders, and to clarify the lawful basis for extraction.
9. The extraction of data from relevant electronic devices will be permitted in two scenarios:
 - Clause 37 of the Bill creates a clear statutory basis to extract information from digital devices with the agreement of the user of the device. This power can be used for the purposes of preventing,

⁹ https://ico.org.uk/media/about-the-ico/documents/2617838/ico-report-on-mpe-in-england-and-wales-v1_1.pdf

¹⁰ <https://ico.org.uk/media/about-the-ico/documents/2620094/ico-investigation-mpe-northern-ireland-202106.pdf>

detecting, investigating and prosecuting crime, helping to locate a missing person or protecting a child or at-risk adult from harm

- Clause 41 of the Bill creates a clear statutory basis to extract information from digital devices in the investigation of a death if the device is believed to have been used by the deceased prior to their death and where there may be an investigation by a coroner.

10. The provisions will be supported by a Code of Practice which the Legislative Consent Memorandum states

“seeks to ensure that authorised persons:

- exercise data extraction powers only where necessary, and thereafter only in a manner that is proportionate, in accordance with the law and pursuant to a reasonable belief that there is relevant information on the device;
- have access to practical guidance on the exercise of data extraction powers in practice, including to determine if such powers are the most appropriate for use in any particular case; and
- have access to specific guidance on the considerations they should make, and the greater level of sensitivity they should apply when interacting with victims and witnesses of a crime, especially vulnerable victims of serious offences, such as rape and other sexual offences.”

Committee Consideration of the Legislative Consent Motion

11. The Committee was first advised that consent would be required to extend provisions relating to powers to extract information from mobile devices on 17 February 2021 during its consideration of the first LCM for the PCSC Bill.
12. The Department advised that the provisions in the Bill would create a clear statutory basis for police and other authorities to extract information from digital devices where the device user (most likely to be a victim or witness) agrees to give it to the police and agrees that data can be extracted from it, and would address a recommendation made by the ICO in June 2020. The Department also advised that the provision would be supported by a Code of Practice which would provide guidance to authorised persons on how to obtain agreement, the information to be given to the device user and how to ensure the required standards of necessity and proportionality are met before using the power.
13. The information from the Department was considered by the Committee at its meeting on 4 March 2021. At that time, the Committee agreed to seek the views of the AGNI, the NIHRC and the Northern Ireland Commissioner for Children and Young People (NICCY) on the provisions to be included in the LCM including their compatibility with the European Convention on Human Rights (ECHR).
14. Along with its response to the Committee on 7 April 2021, the NIHRC provided a copy of a submission made to the Department of Justice in March 2021 in which the Commission had made recommendations regarding consultation on and content of the Code of Practice and in relation to oversight for any individual or organisation listed as an “authorised person” in Schedule 3 to the Bill with jurisdiction in Northern Ireland.

15. In its response of 8 April 2021, the AGNI noted that Section 6 of the Human Rights Act 1998, which provides that it is unlawful to act in a way which is incompatible with rights drawn from the ECHR, is relevant to the exercise of powers under a number of provisions to be included in the Bill and cited an example regarding the extraction of data from a mobile device.
16. At the meeting on 15 April 2021 the Committee noted that NICCY did not intend to provide a response on these issues and agreed to forward the responses from the AGNI and the NIHRC to the Department for comment.
17. The Department's response of 18 May 2021 was considered at the meeting on 27 May 2021. The Committee noted that the Department had sought assurances from the Home Office and considered that the issues raised by the AGNI were capable of being addressed in the Code of Practice.
18. In response to the NIHRC recommendations, the Home Office advised that it had already been working with the Department and the PSNI to ensure their views were taken into account in the drafting of the Code and, while formal consultation could not begin until after the Bill had received Royal Assent, a draft of the Code would be shared with a wider set of stakeholders as part of informal consultation of the first draft of the Code. The Home Office also confirmed that the Code will refer to the legal guidance from *R v Bater-James* and will also address the impact of information extraction on victims of rape and sexual offences and ensure best practice for dealing with these offences is incorporated. In respect of authorised persons, the Home Office advised that those with jurisdiction in Northern Ireland named on the Bill such as the PSNI are already subject to specific oversight from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services and the Police Ombudsman for Northern Ireland, and from the Information Commissioner's Office which has the UK wide remit for managing compliance with the Data Protection Act.

19. The Committee considered the Department's response on 27 May 2021 and agreed to forward it to the NIHRC for its further views and comments.
20. The Committee was subsequently notified in correspondence from the Department dated 16 June 2021 that the Executive had not agreed to the inclusion of the provisions relating to data extraction from mobile devices in the LCM, but that it may return to this matter when the Code of Practice had been drafted and consulted on. Although not considered further as part of the initial LCM, the Committee continued to pursue this matter separately with the Department of Justice and the NIHRC.
21. In its response dated 21 June 2021, the NIHRC welcomed the engagement between the Department and the Home Office and advised that it would await the publication of the Code of Practice prior to making any further substantive comment. The NIHRC also noted that it remains unclear if there will be a requirement for authorised persons to publish statistics on the extent of the use of these powers.
22. In subsequent correspondence dated 28 September 2021, the NIHRC advised that it had received a copy of the draft Code of Practice. The Commission indicated that it had responded to the Department stressing the benefit of further consultation and engagement and called for more detailed guidance on the application of the ECHR to decision-making. The Commission advised that the Code should be drafted to reflect the best trauma-informed practice and should include practical advice to prevent, or at least mitigate, the secondary victimisation that can result from such data extraction.
23. At its meeting on 30 September 2021, the Committee agreed to forward the NIHRC correspondence to the Department for assurance that the Commission's views would be conveyed to the Home Office and to request details of other

stakeholders that the Department had consulted with on the Code of Practice. The Committee also agreed on 21 October 2021 to seek further clarification from the Department on the rationale for the Executive's decision not to extend the provision in the Bill on the extraction of data from mobile devices to Northern Ireland.

24. The Department wrote to the Committee on 15 November 2021, confirming that the views of the NIHRC and the AGNI had been copied to the Rt Hon Kit Malthouse MP, Minister of State for Crime, Policing and Probation in the Home Office and advised that a further iteration of the Code from the Home Office had also been forwarded to both the NIHRC and AGNI. The Department also informed the Committee that the Minister was exploring whether the provisions could be included in the Bill but not commenced in Northern Ireland until any outstanding issues in relation to the Code have been resolved. The Committee noted the position on 18 November 2021.
25. The Minister of Justice wrote to the Committee on 1 December 2021 requesting views on the proposal to proceed with an LCM regarding the extraction of data from mobile devices on the basis that it would extend to Northern Ireland but not be commenced until the Code of Practice had been finalised and not without the agreement of the Assembly. The Committee noted this correspondence at its meeting on 2 December 2021 which also advised that the Minister was seeking the approval of the Executive in relation to the LCM.
26. At the Committee meeting on 3 February 2022, Members considered a written briefing paper dated 26 January 2022, which the Department had provided along with a list of changes/amendments to the Code to date, relative to Northern Ireland, as well as a comparison of the original and amended provisions of the draft Bill to be read alongside the Code. The Committee noted that whilst significant progress had been made on the draft Code of Practice, concerns still remain for both the NIHRC and the AGNI which the Department

had shared with the Home Office, indicating that it will require all relevant concerns to be addressed, as far as possible, prior to the provisions of the Bill coming into force in Northern Ireland.

27. The Committee is aware that it is unlikely that the Code will be amended further before Royal Assent is given. However, the Department advised that potentially extensive amendments are expected as a result of the public consultation, and it will continue to work with Home Office officials from Royal Assent through to the proposed time of commencement. Home Office officials have assured the Department that a copy of the consultation documentation, including an updated draft Code, will be provided in advance of the public consultation and have also given assurances that relevant feedback, whether received from the Department or via the public consultation, will be captured in the final text.
28. The Department's briefing paper also confirmed that the Executive had given its support for a conditional LCM. In this regard, the Minister will consult with the Assembly following completion of the public consultation on the Code and will not agree to the commencement of the provisions without the consent of the Assembly. The Minister wrote to the Rt Hon Kit Malthouse MP, Minister for Crime, Policing and Probation, and Tom Pursglove MP, Minister for Justice and Tackling Illegal Migration, on 14 January 2022 to advise of the proposed arrangement.
29. The Committee also noted a further amendment to the extraction clauses which will put the exercise of data extraction powers in relation to confidential information on the face of the Bill rather than in regulations. The Department stated that this does not authorise the extraction of confidential information, or extend or otherwise alter the scope of extraction powers as originally drafted but outlines a number of new steps that must be taken, in addition to all other existing steps in the Bill and Code, if an authorised person thinks that in exercising those powers there is a risk of obtaining such information. The

Department has confirmed that the amendment does not materially alter the scope of extraction powers envisaged by the Bill but rather provides greater clarity on the exercise of those powers in the context of confidential information.

30. Having considered the detailed information provided, the Committee agreed on 3 February 2022 that it was content in principle with the proposal to extend to Northern Ireland the provisions in Chapter 3 of Part 2 of the Police, Crime, Sentencing and Courts Bill, in so far as they relate to Northern Ireland, and that the commencement of those provisions would be conditional on Assembly agreement to consider whether the Code of Practice, following the public consultation, complies with protected rights and requirements.

Conclusion

- 31. Following consideration of the Legislative Consent Memorandum laid on 7 February 2022, the Committee for Justice agreed to support the Minister of Justice in seeking the Assembly’s endorsement of the Legislative Consent Motion**

“That this Assembly agrees in principle to the extension to Northern Ireland of the provisions in Chapter 3 of Part 2 of the Police Crime, Sentencing and Courts Bill, in so far as they relate to Northern Ireland, and agrees that commencement of those provisions would be conditional on Assembly agreement to consider whether the Code of Practice, following the public consultation, complies with protected rights and requirements.”

Links to Appendices

Appendix 1: Minutes of Proceedings

[View Minutes of Proceedings of Committee meetings relating to the report](#)

Appendix 2: Memoranda and Papers from the Department of Justice

[View Memoranda and Papers supplied to the Committee by the Department](#)

Appendix 3: Memoranda and papers from others

[View the other papers and correspondence received on the Bill](#)

Appendix 4: Legislative Consent Motion: Police, Crime, Sentencing and Courts Bill

[View the Supplementary Legislative Consent Motion](#)

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