

FROM THE OFFICE OF THE JUSTICE MINISTER



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Justice Committee Chair
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5 August 2020

Dear Paul,

DOMESTIC ABUSE AND FAMILY PROCEEDINGS BILL – CLAUSE 10

Thank you for your letter of 7 July. Following written and oral evidence provided to the Justice Committee on the Domestic Abuse and Family Proceedings Bill, by the then Attorney General for Northern Ireland Mr John Larkin QC, you wrote to ask that I consider the issue raised by Mr Larkin in relation to Clause 10 of the Bill. Mr Larkin considers that the Assembly does not have legislative competence in relation to this clause around extra territorial jurisdiction.

Ahead of the Bill being introduced as Minister I am required to sign a statement of legislative competence (having been advised by our Chief legal adviser on each of the clauses) that that I consider the Bill in its totality is within the competence of the Assembly. In addition, the Executive and the Speaker of the Assembly have to be content that the Bill is within the competence of the Assembly.

As you are aware, the Executive, the Speaker of the Assembly, and I, have all previously indicated that we are content that the Bill is within the competence of the Assembly and a statement of legislative competence was approved. My officials and I have held further discussions with both Legislative Counsel and senior legal advisers following the issue raised by Mr Larkin QC during the Committee evidence gathering. I, along with our legal advisers, remain of the view that Clause 10 is within the legislative competence of the Assembly. This is an issue that I along with officials and the Departmental Solicitors' Office have given extensive consideration to over recent months.

In terms of the competence of the Assembly the Northern Ireland Act 1998 prohibits an Assembly Act from forming part of the law of another country. It does not prohibit extra territorial provision, in the sense of application as distinct from extent, so long as such provision sounds only as a matter of Northern Ireland law. My Department and I consider that it is within legislative competence to create an offence under Northern Ireland law even where the criminal conduct occurs outside Northern Ireland. Furthermore it is considered that clause 10 does not make law in another country – as recognised or enforceable as such by that state – even if behaviour in that country counts in the eyes of Northern Ireland law so far as governing the domestic abuse offence locally. In relation to behaviour in another country that contributes towards the domestic abuse offence locally, individuals will not be penalised in that country or by its authorities even where they are potentially penalised in Northern Ireland under the rules of Northern Ireland law. As regards the clause of the Bill it is not considered that it forms part of the law of another country or confers functions other than in or as regards Northern Ireland.

It may also be helpful to set out for Members some other pieces of legislation, with a similar construct to the Clause 10 provisions, which Ministers, the Executive and the Assembly have approved and which are therefore deemed to be within the legislative competence of the Assembly. This includes provision in the Serious Crime Act 2015 (relating to female genital mutilation offence provisions locally), which the Assembly gave legislative consent for in 2014. Other similar matters are dealt with in relation to forced

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marriage within the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which was approved by the Assembly. Harassment provisions, in a Legislative Consent Motion debated on 23 June 2020, are of an almost identical construct to Clause 10 and have also been approved by the Assembly. Members may also wish to note that Scotland has similarly approved a Legislative Consent Motion, which along with Westminster having sought Legislative Consent Motions in the first instance, indicates that these are devolved matters.

While any change in position to Clause 10 may be seen as a challenge to the authority of the Speaker and, by virtue of that, the authority of the Assembly in terms of the matter being within devolved competence this in itself is not sufficient reason not to change course should it be considered appropriate and necessary. However, in this instance, I see no justification for a change in position and wish to reassure Members again that this issue has been robustly considered on a number of occasions, in conjunction with our legal advisers and Legislative Counsel, who remain satisfied that Clause 10 is within the competence of the Assembly.

I trust that this provides the necessary reassurance to Committee Members.

**NAOMI LONG MLA
MINISTER OF JUSTICE**