



Committee for Justice

OFFICIAL REPORT (Hansard)

Criminal Finances Act 2017:
Department of Justice; Police Service of
Northern Ireland; National Crime Agency

28 May 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Ms Sinéad Bradley
Mr Gordon Dunne
Mr Paul Frew
Miss Rachel Woods

Witnesses:

Mrs Cathy Galway	Department of Justice
Ms Andrea Watson	Department of Justice
Mr Patrick Crothers	National Crime Agency
Det Ch Supt Darren Evans	Police Service of Northern Ireland

The Chairperson (Mr Givan): I welcome Cathy Galway, the deputy director of the protection and organised crime division in the Department of Justice, and Andrea Watson, who is the acting head of the organised crime branch in the Department of Justice. I also welcome Patrick Crothers, senior lawyer in the legal department of the National Crime Agency (NCA), and Detective Chief Superintendent Darren Evans from the Police Service of Northern Ireland (PSNI), both of whom are participating via teleconference. The session will be reported by Hansard and published in due course on the Committee web page. Cathy, I invite you to take us through the relevant areas.

Mrs Cathy Galway (Department of Justice): Thank you, Chair. We are grateful for the opportunity to brief the Committee about the commencement of the relevant provisions of the Criminal Finances Act 2017 in Northern Ireland. Andrea and I are here, and we have Patrick and Darren, albeit remotely, who will be happy to answer any queries that the Committee may have on the enforcement tools and the powers for asset recovery in Northern Ireland.

Chair, from the briefing note that we shared with the Committee, you will be aware that the Criminal Finances Act extends to Northern Ireland but a significant number of the provisions have not been commenced yet. The Act is in four Parts, covering the proceeds of crime, terrorist property, corporate offences of failure to prevent tax evasion and general amendments. Most of the outstanding provisions relate to the proceeds of crime, money laundering, civil recovery, enforcement powers and related offences. It creates a new range of powers for law enforcement agencies to request information and to seize money stored in bank accounts and mobile stores of value.

The provisions amend and add to the powers that are already available on a UK-wide basis under the Proceeds of Crime Act 2002. This strengthens the existing provisions in the Proceeds of Crime Act to

ensure that law enforcement agencies and authorities have effective legal powers to deal with the threat posed by serious organised crime and to ensure that its application in Northern Ireland is consistent with its application in the rest of the UK.

Disrupting and preventing those who seek to move, hide or use the proceeds of crime or corruption is a key objective of government. The Justice Minister has stated that commencing the provisions of the Criminal Finances Act 2017 in Northern Ireland is one of her key priorities. The Minister and the permanent secretary indicated in their introductory meetings with the Committee that the intention was to work towards commencement by the end of 2020. The Minister recently wrote to you, Chair, and to Executive colleagues to signal her intention to seek the commencement of the provisions with support from colleagues. She has also indicated that she intends to write to the Home Secretary to ask her to commence the relevant provisions and to progress the supporting work that underpins the commencement of those provisions as soon as possible in Northern Ireland.

If it is helpful, I will set out a bit of background to the Act, and the briefing paper provides additional detail on the background to the inclusion of the provisions for Northern Ireland. As you will see from the paper and as I outlined, the provisions relate to a mix of reserved matters, such as terrorist financing and tax, and devolved matters, such as asset recovery and powers to recover the proceeds of crime. A legislative consent motion (LCM) is the usual process by which the Assembly indicates that it is content for the UK Parliament to pass a law on a devolved matter. The previous Executive agreed to an extension of certain provisions of the Home Office's Criminal Finances Bill to Northern Ireland and to the tabling of an appropriate legislative consent motion in the Assembly.

A draft legislative consent memorandum was considered and approved by the Committee for Justice and the Executive in 2016. The memorandum was laid in the Assembly Business Office, but the debate on the legislative consent motion was not possible before the Assembly was dissolved in January 2017. Although the appropriate steps were taken in December 2016 for the consent of the Assembly to the relevant provisions in the Bill and their extension to Northern Ireland, those could not be finalised. The UK Government decided that the devolved provisions should remain in the Bill, with the commencement of the Act in different jurisdictions at different dates. The provisions that have not been commenced in Northern Ireland are set out in paragraphs 8 and 9 of the briefing paper. The paper explains that Home Office Ministers took the decision to keep all the proposed provisions in the Bill but that the commencement of the provisions that touched on devolved competence in Northern Ireland would be held until the necessary consents were in place.

We have sought advice on how to proceed in these circumstances, where there is legislation now enacted, and we have been advised that there is no established protocol for seeking retrospective consent to the provisions of an Act of Parliament that extends to Northern Ireland. The Committee will be aware of a similar scenario with the Crime (Overseas Production Orders) Act 2019 (COPO).

The Home Secretary and the Department of Justice are empowered under the Act to commence the provisions in Northern Ireland by regulations. There have been wide calls for the full commencement of the provisions so that they are available to operational enforcement agencies, particularly the provisions for unexplained wealth orders (UWOs), account forfeiture and listed assets.

Since the return of the Northern Ireland Assembly, the Department has been working with the Home Office and colleagues in other Departments to scope out the steps required to deliver the commencement of the outstanding provisions. The process of commencing the provisions in the Act will be taken forward, in the main, by the Home Office on behalf of the Home Secretary by regulations. The Department of Justice will commence the four provisions at the Northern Ireland Assembly, again by regulations.

Following the request to the Home Secretary from the Justice Minister, as outlined in the letter to the Committee, the Home Office will begin the process of commencement. It will work to a single commencement date for all the provisions that fall to the Home Secretary to commence. Setting a commencement date later in 2020 is necessary, as guidance needs to be published on the new provisions under the Proceeds of Crime Act 2002 codes of practice. There will be public consultation on the nine codes of practice: four issued by the Department, four by the Home Office and one by the Attorney General for England and Wales. We hope to return to the Committee for scrutiny of the Northern Ireland codes of practice after the summer recess. That will involve a complex programme of work in collaboration with the Home Office, and, additionally, the Department will develop instructions for Northern Ireland court rules. The lead-in time will give law enforcement an opportunity to prepare for the commencement of the new provisions and take forward any necessary training.

The commencement of the legislative provisions is an important step in enhancing Northern Ireland's law enforcement response to tackling money laundering and recovering the proceeds of crime. The Minister has indicated that she intends to issue a written statement to the Northern Ireland Assembly to inform Members about the decision to progress the commencement of the relevant provisions of both the Criminal Finances Act and the Crime (Overseas Production Orders) Act.

I hope that I have provided the context for the Criminal Finances Act and outlined the proposed process for commencement. I will stop there. I am happy to take any questions that members may have on the commencement of the provisions.

The Chairperson (Mr Givan): Thank you, Cathy. That was helpful by way of giving us an overview of what the Department wishes to do. I have some procedural questions. You mentioned that there is no established protocol for commencing and giving effect to the regulations retrospectively. How will the regulations be processed? Will it be through an LCM, albeit that should have happened when it was going through Westminster? Will there be an affirmative-type vote in the Assembly? What process does the Department think it will have to follow?

Mrs Galway: There is a range. The commencement orders are made. The court rules are made by affirmative resolution. I will bring Andrea in for some of the detail on this. For the Home Office regulations to commence, they are made. For other regulations, they are made through affirmative procedure. So, it is a mix. The LCM is a process whereby legislative consent is granted for provisions in a Bill as that Bill is going through. As the Bill is now an Act — it is enacted — the LCM process is not the process by which you gain consent. That is why the Minister has written to ministerial colleagues and the Committee to say that we can commence these. The Department of Justice and the Home Office have powers in the Act to commence the provisions. Andrea, do you want to give a bit more information on the process?

Ms Andrea Watson (Department of Justice): As Cathy said, it is commencement by commencement regulations. The Department here is empowered to commence four small provisions of the Act. The other remaining provisions will be commenced by regulations by the Home Secretary. There is no parliamentary or Assembly control for those commencement regulations.

The Chairperson (Mr Givan): OK. The Assembly and the Department of Justice put down an affirmative commencement regulation; that gives us an oversight role. What role do we have when the Home Secretary lays down commencement regulations?

Ms Watson: There is no role for the Committee or the Assembly in that.

The Chairperson (Mr Givan): Does the Home Secretary lay commencement regulations on devolved matters?

Ms Watson: Yes. She will lay commencement regulations on provisions that were included in the original legislative consent memorandum that we tried to progress. Some of those provisions are totally devolved. Some of them are a mix of devolved and reserved responsibilities. Some of the reserved responsibilities cut across devolved competence and involve work that the PSNI, for example, will take forward. That was the reason for seeking consent when that was possible in 2016 and 2017.

The Chairperson (Mr Givan): OK. Has any thought been given to how the Department could get a view from the Committee or the Assembly, even in an indicative consultative role?

Mrs Galway: Part of the reason for coming to the Committee and having this session today is to explain the Criminal Finances Act and the provisions as they would apply when commenced. There will be a role for the Committee and the Assembly when codes of practice are being put together. It is our intention to consult the Committee on the codes of practice and on the court rules. There will be some actions by affirmative resolution.

Ms Watson: We would share the court rule instruments with the Committee before they are laid. They would be laid by negative resolution, and the Assembly would consider them at that point.

The Chairperson (Mr Givan): The code of conduct relates to the implementation, who has the authority and how that should be handled. At the start of the unexplained wealth orders, there was some debate about the threshold being at £100,000, although it was reduced to £50,000.

Mrs Galway: Yes, that is right. During the Bill's progress, the Committee and, I think, the PSNI asked for it to be reduced to £50,000. It is now £50,000.

The Chairperson (Mr Givan): Yes, I had read that. The £50,000 threshold applies across the UK. There was discussion about oversight of the implementation and about some human rights aspects. Will judicial oversight, for example, of the unexplained wealth orders be issued? Can you talk me through that?

Mrs Galway: Yes. There is judicial oversight of the unexplained wealth orders; a process is followed. Patrick may want to give the NCA legal view on this. An unexplained wealth order has to be granted by the High Court. Maybe Patrick could give us the detail of how that would operate.

Mr Patrick Crothers (National Crime Agency): Yes. Good afternoon. In relation to applications for unexplained wealth orders, there are statutory requirements and thresholds that have to be met in every application. Every application is subject to judicial scrutiny at High Court level. If a High Court judge is not satisfied that the statutory thresholds have been met, an order will not be made. The process has judicial scrutiny at its heart.

The Chairperson (Mr Givan): OK, that is helpful. Obviously, an aspect is already in play here with terrorist financing. One of the issues raised is that unexplained wealth orders will be used to go after paramilitaries. Is that not already the case? Is there a change in introducing unexplained wealth orders by way of targeting paramilitary organisations through that approach?

Mrs Galway: Chair, unexplained wealth orders are a civil matter. The PSNI can still confiscate and cover the proceeds of crime when there is a criminal conviction. Darren and I talked about that this morning, so maybe he could explain the role of the PSNI, as it does not have a role in unexplained wealth orders, apart from being able to refer another authority to take them forward. Maybe Darren could explain the role of the PSNI and what already happens operationally with the proceeds of crime through tackling paramilitaries.

The Chairperson (Mr Givan): Darren?

Detective Chief Superintendent Darren Evans (Police Service of Northern Ireland): Yes, Chair. Hopefully, you can hear me OK. It is a difficult line.

The Chairperson (Mr Givan): Yes, we can hear you no problem, Darren.

Detective Chief Superintendent Evans: OK. As Cathy said, the PSNI has powers under the Proceeds of Crime Act 2002, and we utilise those powers. The point to draw out here is that we rely on the broader partnership base — the NCA, Her Majesty's Revenue and Customs (HMRC) and other partners — to support that. We will make seizures of criminal assets that we come across, particularly in paramilitary investigations. The difference with the unexplained wealth orders is that we have to get to court and prosecute an individual. Then, on the back of that, we make an application for confiscation. We have the ability with an unexplained wealth order, from a civil perspective, to make that referral to our partners in the NCA, where a lesser burden of proof is required.

The Chairperson (Mr Givan): Who, primarily, is this targeted at? Where do you see the main area of crime, where people can have their unexplained wealth taken from them? What type of people are we going after? Criminals, obviously, but is there a particular section that is slipping through the net?

Detective Chief Superintendent Evans: We look at crime in its broadest sense, and that will be across all [*Inaudible*] of organised crime committed across Northern Ireland and, indeed, outside the borders of Northern Ireland. It is not limited to a particular section or area of crime; it is crime in its broadest sense.

The Chairperson (Mr Givan): How do you deal with a person operating in cash, for example? If a significant amount of money appears in somebody's bank account, that is probably flagged up under

current systems and can be looked at. Talk me through how you get the evidence trail to pull together an order.

Detective Chief Superintendent Evans: We will follow the money. We can go for an account freezing order in that regard and will look to see where the money has come from. The benefit of the unexplained wealth order, as it stands, is that it puts the burden of proof on the respondent to prove where an asset or money has originated. That takes the burden off the police or our partners and puts it on the individual. At present, we follow the money to where it originated.

The Chairperson (Mr Givan): Thank you Darren, that is helpful.

Miss Woods: I have a number of questions, but I will try to stick to a few of them, as we are tight for time. Is this specifically for the jurisdiction of the United Kingdom? Can it apply to other territories? Does it just cover operations in the UK, or will it operate in Europe or in other countries? Are there any agreements on unexplained wealth orders with other countries, for example, if somebody puts money into bank accounts overseas? I ask especially with regard to the tax evasion section. Do they just apply here, or do they apply elsewhere?

Mrs Galway: The Act extends to the UK, but there are provisions in it that allow us — I will bring Patrick in on this — to look at Crown dependencies and overseas territories and money held in accounts there. The provisions that we hope to bring in and commence will allow the UK, as a whole, to operate the provisions. However, there are elements of it that allow accounts in overseas territories to be looked at and in the Crown dependencies of Guernsey, Jersey and the Isle of Man. Patrick may want to say a bit more about the reach of the Act.

Mr Crothers: These non-conviction-based asset recovery provisions can extend outside the jurisdiction of Northern Ireland and the UK, but they are subject to the laws of the land where the asset or money is located. There is a concerted effort on the part of law enforcement to develop working partnerships with law enforcement in other jurisdictions to ensure that, if assets are located outside the UK or Northern Ireland, some jurisdictions will freeze and, indeed, recover them. Those moneys can then be repatriated, in theory. However, it can be difficult, because, with the myriad of legal processes in different jurisdictions, you cannot always find an analogous regime.

In relation to investigations, an awful lot of cooperation goes on between jurisdictions. The issue of unexplained wealth orders in particular, as they are a microcosm of civil recovery proceedings as a whole, is that, provided that there is a connection to the jurisdiction making the order, whether Northern Ireland or the UK, civil recovery has extra-jurisdictional reach. However, it depends on the other jurisdiction for the enforcement of any order.

Miss Woods: OK, thank you. That is certainly something that I would like more detail on. We know that money transfers do not just happen within our jurisdiction, so it would be good to get more information on how they have been working in the rest of the UK, which has had them for some time.

To clarify, what law enforcement agencies are we discussing with the provisions? Are we talking about the police, the NCA, HMRC?

Mrs Galway: There are different law enforcement authorities for the different types of provision. For example, with the unexplained wealth orders it is not the PSNI. The enforcement authorities are listed in the provisions. For other provisions, it includes police officers. I can get you more detail on those and write to you, but it is set out in the legislation.

Andrea, do you want to pick up on the enforcement agencies for unexplained wealth orders?

Ms Watson: For the unexplained wealth orders, the NCA will have the powers, as will HMRC, the Serious Fraud Office (SFO) and the Financial Conduct Authority (FCA). The powers are also designated to the Director of Public Prosecutions (DPP) in England and Wales and the Director of Public Prosecutions in Northern Ireland. We envisage that the NCA will be the main agency in Northern Ireland taking forward any unexplained wealth orders that come forward.

A range of law enforcement agencies have powers to confiscate and make cash seizures. The Northern Ireland Environment Agency (NIEA), as part of the Department of Agriculture, Environment and Rural Affairs, has powers to undertake confiscation, post criminal conviction. There is quite a

range. The Department for Communities, on the benefit fraud side, also has powers of confiscation, so it will be interested in some of the changes being brought in and in the amendments to the Proceeds of Crime Act 2002 through the Criminal Finances Act.

Miss Woods: Brilliant. It is a very wide-ranging group of people. Obviously, guidance will need to be issued for all those organisations.

Ms Watson: That is what the codes of practice cover. The codes of practice for the Proceeds of Crime Act cover the guidance for all the operational powers. There is a big programme of work to amend the codes now, and the Committee will see the Northern Ireland codes. They will be subject to affirmative order in the Assembly, so there will be full Assembly scrutiny of the codes of practice that provide the operational guidance on the proper use of the powers, as legislated.

Miss Woods: Brilliant. Finally, just in terms of the practical outworking, I see that we have the proceeds of crime going into schemes such as the assets recovery scheme, which community groups and so on can apply to. Will there be something similar in the outworking of this with any moneys confiscated under it? Is that a similar process that could be used?

Mrs Galway: Yes, the assets recovered will go into the Consolidated Fund, and some of that fund will be used to compensate victims of crime. Some of it goes to the enforcement agencies that were successful in securing the recovery of the assets, and some of it is distributed by the Department of Justice through the assets-recovery community scheme. A range of things can happen with the money that comes back in. Asset recovery is a response. The primary purpose is not to generate revenue to be redistributed. The primary purpose is to disrupt criminal activity and to stop criminals from having access to funds to enhance their criminal activity. Again, as discussed with PSNI colleagues this morning, the asset recovery is a tool and a response. Generating income is not the primary purpose, but it serves a purpose when it is recovered.

Miss Woods: Absolutely. I understand that. Thank you.

The Chairperson (Mr Givan): Has the Attorney General for England and Wales been advising on the code of conduct aspects? You mentioned the AG having a role in England and Wales. I want to get the context of that again.

Ms Watson: The Attorney General for England and Wales, who also holds the position of Advocate General for Northern Ireland, has inserted the new UWO provisions guidance into a code of practice. That one code covers England, Wales and Northern Ireland. Once the UWO provisions are commenced in Northern Ireland, that code will be amended by the office of the Attorney General for England and Wales to take account of the powers being commenced in Northern Ireland.

The Chairperson (Mr Givan): OK. I know that the Attorney General for Northern Ireland has a role in providing section 8 guidance on human rights to criminal justice organisations. Is there an interface with that office?

Ms Watson: We will publicly consult on the codes, and the Department will write directly to the Attorney General for Northern Ireland and make sure that he is sighted on all the various codes.

The Chairperson (Mr Givan): OK. Is there a figure in mind for how many of these orders could be in place once it becomes live? If this tool was available to the Police Service and the other bodies now, how many would be issued? Has that been looked at?

Mrs Galway: Patrick might come in on that. He will be able to set out what has happened in the other jurisdictions.

Mr Crothers: Chair, I will set this in a short context. The provisions under the Criminal Finances Act that the Minister seeks to bring in primarily deal with financial crime. As the Committee will be aware, financial profit is at the heart of almost all forms of serious and organised crime, including paramilitary crime. Those crimes directly affect the most vulnerable in Northern Ireland society.

The current provisions that law enforcement in Northern Ireland operates under enable us to take action on criminal cash and big assets, such as houses and helicopters and the like. Since 2002, when the Proceeds of Crime Act came in, criminals have become increasingly sophisticated in finding

alternative ways to launder the proceeds of crime and laundering it to fund further criminal activity. Effectively, they will use any mechanism to hold and move illicit funds. The use of bank accounts, precious metals, jewellery and even very expensive watches has become increasingly common.

The provisions that we are talking about in the Act that the Minister seeks to commence will bridge the gap by enabling the seizure and forfeiture of such items. In particular, the ability to freeze and forfeit the proceeds of crime that are held in bank accounts will not only address the concerns that are being raised by the regulated sector, particularly banks, which, of course, have a statutory obligation to report suspicious activity, but will ensure that law enforcement can take swift action to disrupt criminal money laundering activity.

While we all want to maximise the recovery of criminal assets, it is important to recognise that the real value of going after the money or, indeed, the asset comes from the disruptive effect on the criminality. By targeting criminal money flows, you can remove the criminal working capital, unpick and derail conspiracies and prevent further crimes taking place. You can damage criminals' reputations with each other and in their communities and connect the higher-level godfathers, as it were, and enablers to crimes that are maybe being committed by lower-level activists.

The provisions will bring in a level playing field and give law enforcement in Northern Ireland the ability to collaborate with law enforcement in Great Britain, because, of course, organised crime has no respect for borders. That means that we can have a joined-up approach to dealing with those [*Inaudible*.] There has been a certain focus on unexplained wealth orders at this time. I want to clarify that an unexplained wealth order is not an end in itself: it enhances the existing powers to do with civil recovery. The object of an unexplained wealth order, essentially, is to capture evidence that would otherwise be unavailable — perhaps because that evidence lies outside the jurisdiction — or to link people who may be sitting with vast property portfolios but no connection to unlawful conduct, save that they might be connected to someone who is involved in unlawful conduct. The orders are only investigative orders. Obviously, they allow an enforcement authority like the NCA to assess whether, in actual fact, there is a viable civil recovery case to be taken forward thereafter.

In the wider context of how these things have actually played out in the past year since commencement in GB, the vast focus has been very much on account freezing and forfeiture applications and, indeed, the listed assets applications. Up to 30 April 2020, 1,519 applications for freezing orders had been made across all law enforcement bodies. For freezing listed assets, 131 applications had been made. The amount of money in frozen bank accounts is in excess of £300 million. Particular cases will skew those figures, given that the statutory threshold for freezing is only £1,000. Around £12.5 million's worth of listed assets are currently frozen, awaiting forfeiture applications.

In contrast, to date, only four unexplained wealth order applications have been made before the High Court in London. Two of those have been made on the basis of politically exposed person (PEP) applications. That would be done in the context where assets have been located in the UK that perhaps belong to a person who has been in a position of authority in a foreign state. Those are investigations into those types of cases. The two other cases involve serious organised crime. Obviously, without speculating as to whether there will be PEP cases or serious organised crime-type cases in Northern Ireland, one has to be realistic that there is already a suite of investigative orders in Part 8 of the Act, and this is just one more investigative order that tries to fill the gaps and enhance the capability of law enforcement to pursue non-conviction-based outcomes in order to recover the proceeds of crime.

The Chairperson (Mr Givan): That is very helpful. Can I just clarify a couple of points? Are the figures that you gave for applications to freeze accounts and assets cases the figures for GB?

Mr Crothers: They are purely for GB, because, at this time, law enforcement in Northern Ireland is unable to access those. Law enforcement bodies in Northern Ireland, particularly the PSNI, have of course been playing a role with the National Economic Crime Centre and, therefore, are well advanced in their preparations to hit the ground running in the use of the additional powers.

The Chairperson (Mr Givan): Is that since the introduction of those powers being made available to GB? When was that?

Mr Crothers: The Act is dated 2017, but the powers are effectively from 2018. The figures are from commencement of the Act up to 30 April this year.

The Chairperson (Mr Givan): That is helpful. Correct me, but you said that there had been only four unexplained wealth orders brought to the High Court in London.

Mr Crothers: That is correct. There are a number of other cases in scoping. The cases that involve other jurisdictions, as you can, perhaps, imagine, are quite involved and complicated, particularly where most of the evidence will lie offshore and will be opaque through the use of complex trust structures etc. There is a lot of work going on, but, as I say, the orders are not the panacea to bringing these matters forward. They enhance our capability. The civil recovery arena and orders obtained to recover the proceeds of crime in that manner is still very healthy. It is an enhancement as opposed to an alternative.

The Chairperson (Mr Givan): Thank you. That is very helpful.

Ms Dillon: Thank you, all of you. Some of my questions are technical. The Policing Board had a presentation where Darren had a role, so I have a fair understanding of unexplained wealth orders and what the legislation will, it is hoped, enable the PSNI and other partner agencies to do.

You said that some of the orders would apply to other Departments, for example the Department for Communities and DAERA. Will other Departments also be involved in scrutinising the codes of practice or will that come to just this Committee?

Ms Watson: We will run a public consultation on the codes, so we will send them out widely, and they will have an opportunity to comment. We will also do consultation that is more targeted with partners of the Organised Crime Task Force. All those agencies would be represented on the criminal finance group, which is a subgroup of the Organised Crime Task Force. We will make sure that we consult widely on those codes.

Ms Dillon: Does that include the Twenty-six Counties? Are they part of that group or not?

Ms Watson: No. The Organised Crime Task Force comprises agencies that operate in Northern Ireland. An Garda Síochána sits on some subgroups. It is represented on the modern slavery and human trafficking subgroup. It is not on the criminal finances subgroup.

Ms Dillon: In relation section 11, are there limitations on what information can be shared? It refers to making provision for the voluntary sharing of information between bodies in the regulated sector. I assume that the regulated sector is the banks, credit unions and all those financial places where people might try to hide their money.

Ms Watson: Yes, that is correct.

Ms Dillon: That is the common person's speak for it. That is what we are talking about when we talk about the regulated sector. Are there limitations on what information can be shared or is it simply whatever information they hold on a person that can be shared?

Mrs Galway: This brings in provisions to allow for sharing information and sharing in certain cases, but there are instances of legal privilege; client privilege. Generally, these provisions are to enable information to be shared.

I will bring Patrick in at this point on whether there are issues about sharing information in terms of legal privilege.

Mr Crothers: I am not sure whether the question was focused on the information sharing that would go on among members of the regulated sector or in the context of any of the asset forfeiture provisions. This aims to plug a gap. Different banks are used by the same organised crime grouping, and they need to find a way to communicate with each other, as opposed to making some sort of assessment of activity on an account. That assessment might be very different if they knew that three other banks, for example, were being used in the exact same way. Currently, what would happen is that someone else would have to join up the pieces, and that would be the financial intelligence unit in the National Crime Agency, to which suspicious activity reports are submitted. There has been a joint money-laundering intelligence task force set up over the past number of years, and that allows a greater amount of information and intelligence sharing. This Act will place that on a legal footing so that the regulated sector, and those in law enforcement, can have better lines of communication.

In relation to the actual forfeiture orders, the concept of confidentiality is in the legislation and, in particular, none of these types of investigation require a person to answer any privileged question or produce privileged or excluded material. The protections are built in in the legislation to ensure that legal privilege is respected.

Ms Dillon: Section 17 grants the fraud officers direct access to asset preservation powers in confiscation proceedings, recovery of cash and investigatory powers. Those are not currently in the hands of officers, but does anybody currently have those powers, and are they now just transferring to —?

Mr Crothers: Those powers exist with the National Crime Agency and the Director of Public Prosecutions for Northern Ireland as enforcement authorities.

Mr Dunne: I have one point. There is obviously a lot of work to be done here. Are the necessary resources in place in the PSNI and legal services to get on with the job that has been highlighted once this new legislation is in place? We are all very aware of the extent of this and of how much has to be done in relation to implementing the Act, once it is finalised, and getting real results from it. An awful lot of it builds on powers that exist in the Proceeds of Crime Act 2002, so the structures are there. I will bring Darren in to discuss whether there are any capacity issues in the PSNI, once these provisions are brought in.

Detective Chief Superintendent Evans: Patrick has already explained that this is merely an enhancement of the tools that we have available to us for tackling the money of those who perpetrate most harm across our communities, so the capacity currently exists. However, there will be some matters of training and education, and we will manage that internally through our college. We will manage some of that along with the Department of Justice, and we will reach out to our partners in the National Crime Agency to assist with that as well. We will ensure that we are joined up around that.

Mr Dunne: So you do not see a massive step up in workload.

Detective Chief Superintendent Evans: I think that I have gone on record before as saying that we fluctuate between 80 and 120 organised crime groupings that we investigate across the country. We have a system of prioritisation, and there are a variety of offences and legislation that we bring to bear in tackling crimes that have been perpetrated. This will simply be another consideration that we will have. Key to this is our ability to refer these matters to our partners in the NCA, who will be at the forefront in what we are talking about today.

Mr Dunne: You say that you have 80 to 120 organised crime groups that you are hopefully on top of. Is that just in Northern Ireland?

Detective Chief Superintendent Evans: That is purely in Northern Ireland, yes.

Mr Dunne: That number is quite surprising. The ordinary person on the street is not aware of the extent of all that. This is welcome, and the sooner it is implemented, the better.

Ms S Bradley: I just want to ask about future-proofing. I appreciate that the Act cannot be changed at this time and that it is about commencing the provisions that are allowed for under the Act. In those provisions, is there a potential weakness, given that we are an island, that any movable assets could simply be moved across the border? Given that data sharing on a global if not national scale is critical to taking any leads on this, has it been Brexit-proofed? How strong is this tool in the event of data shutdown following Brexit?

The Chairperson (Mr Givan): I am not sure who wants to deal with that one.

Mrs Galway: I do not know whether Patrick wants to come in on Brexit-proofing. It is a UK Act that allows for the sharing of information. In terms of movable assets, the freezing of assets should stop that from happening, and the enhanced tool enables that. I do not know about the Brexit question. Andrea, do we have anything on EU exit?

Mr Crothers: On future-proofing, we are, of course, still in a post-Brexit transitional period. A lot of our existing relationships with other jurisdictions and with law enforcement in those jurisdictions are still

very strong. It is now about finding new accommodations. It will always be the case that money, in particular, will move around the world. With the advent of cryptocurrencies, it can do so at an alarming rate. If assets can be frozen in this jurisdiction, that is what law enforcement will seek to do. If an asset is now outside this jurisdiction, efforts will be made to work collaboratively with the other jurisdiction to freeze the asset there. The common goal should be the removal and denial of the asset from the criminal. Whether that is achieved by law enforcement in this jurisdiction or another jurisdiction is perhaps a different conversation. The objective should be to remove the asset.

We have very strong working relationships and partnerships with an Garda Síochána and the Criminal Assets Bureau (CAB). The Republic of Ireland has non-conviction-based asset forfeiture legislation — not the same as ours but analogous — that it can rely on. It is really a question of having that collaborative approach and sharing investigative strategies to ensure that we work towards a single outcome: tackling a scourge that respects neither border nor sea nor Brexit.

I do not know whether Darren has any further thoughts on that.

Detective Chief Superintendent Evans: Yes. Just to give some assurance, particularly on the cross-border cooperation, it is now under the auspices of the Joint Agency Task Force, which is made up of an Garda Síochána, CAB, the Revenue Commissioners, us, the NCA and HMRC. We readily share information and conduct cross-border joint investigations, and there are many examples of success from that cooperation.

Ms S Bradley: I still have a concern. I understand the need for this to go through; we need legislative powers to give teeth to anything. However, we are an island and, unless it has sufficient legal tie-ups, we are relying on goodwill and good relationships. That is far from ideal in terms of really tackling it.

The Chairperson (Mr Givan): No other members wish to ask questions. I have one question. The briefing paper indicated that the Minister had written to her Executive colleagues about her intention. Has she received a response from an Executive perspective?

Mrs Galway: At this point, I am not aware of a response. I double-checked that today, and we had not had any response yet.

The Chairperson (Mr Givan): OK. Has the Policing Board raised any issues about the commencement of the provisions?

Mrs Galway: Not that I am aware of.

Ms Dillon: Has it been brought to the full Policing Board?

Mrs Galway: Well, I know — sorry, I have been in the Department for only three weeks. I will refer to Andrea.

The Chairperson (Mr Givan): You are doing well. *[Laughter.]*

Mrs Galway: I was going to pull that out as an excuse at one point, so I am using it now. *[Laughter.]*

The Chairperson (Mr Givan): No need.

Ms Watson: The Minister did not write to the Policing Board at the time that she wrote the letter to you, Chair, and the Executive last Friday. There has been no formal consultation. The UWO provisions have come up in discussions with the PSNI at the Policing Board, but I do not believe that there has been any direct formal consultation with the board.

Ms Dillon: It was something that we, as a Policing Board, took quite an interest in. In fairness, we had a number of conversations with the PSNI and, as I said, Darren was involved in some of those. I think that it would be worth having a review of it.

Mrs Galway: Unless Darren is aware of anything from the Policing Board's perspective?

Detective Chief Superintendent Evans: I have to apologise: that last bit of the conversation was really broken up.

The Chairperson (Mr Givan): Darren, it was just whether you are aware of the Policing Board having expressed a view about it. That is just what we are after.

Detective Chief Superintendent Evans: Sorry, Chair. We had a fire alarm going off in the background as well.

I believe that there have been conversations and, as has been highlighted, there have been briefing sessions, particularly at the performance board, about this part of the potential new legislation. I believe that the Policing Board is aware. I cannot comment on its viewpoint.

The Chairperson (Mr Givan): That is fair enough.

Mrs Galway: I will come back to you on that.

Ms Dillon: I would appreciate that. Thank you.

The Chairperson (Mr Givan): The Committee can discuss what its general view is. I very much welcome what we are trying to do here, but there are some procedural things that I would like to see ironed out so that we know exactly what our role is and get some information. I would like to have a letter that says, "This is what the Department of Justice is responsible for. These are the commencement regulations that we will be tabling. This is the affirmative resolution process. This is what the legislation relates to". I would also like to see what the Home Secretary will be specifically responsible for commencing. In that respect, if there is no established protocol around this beyond an informal conversation with the Committee, what will be the mechanism to get a more formal view, albeit, given the scenario that we face, it is non-binding and the Home Secretary can commence it if she has the legal authority to do so? If we have even a consultative role, what does that look like? I raise that because, setting aside the substantive issue to do with this piece of legislation, it would set a precedent for other things if we came back to it as an Assembly, so I would like to make sure that we get the procedure right on this. If there is no established protocol, then we will be setting a precedent that may affect another Department.

Mrs Galway: Apart from the Crime (Overseas Production Orders) Act 2019 and this, I am not sure that it is an issue anywhere else. What we are trying to do is to say, in the absence of an established, predetermined protocol or procedure, what is a proportionate and pragmatic way to deal with this and to get us to the point where we would have been if a legislative consent motion had been procedurally finalised in the Assembly. Just to get a sense, Chair, is it that you want that detail in advance of anything progressing on the commencement?

The Chairperson (Mr Givan): We can move on it. The Committee will turn this around very quickly, but I would just like to have spelt out in more detail the DOJ's specific responsibility for commencement regulations and the Home Secretary's commencement regulations, and how that relates to this aspect of the legislation. If the Home Secretary is commencing what are devolved issues, MLAs rightly ask what that relates to. I can understand why we do not have a role, because there was no Assembly and we missed the LCM, which would have been the normal process, but is there a way that we can give an opinion before the Home Secretary commences these regulations? I suspect that it would not have to be taken into account legally, but it would be worth exploring. Are we able to give a view on it that can be informative, if nothing else? We need to look at what the mechanism is for expressing that. Is it a simple expression of the view of the Committee — a letter from the Committee? What normally would have been an affirmative vote in the Assembly is the optimum, but that obviously is not something that we can do.

Mrs Galway: Is it in terms of all of the provisions? A lot of the provisions were listed in the LCM, but there are some provisions that, as the Bill went through, were not considered in the draft memorandum that was drafted at the time. Would it be helpful for us to set out for the Committee all the processes that that went through, where the approvals were and where there were provisions that were not originally considered?

The Chairperson (Mr Givan): That would be helpful, yes. What I will do, Cathy, is talk it around the Committee members. I will write back as Chair of the Committee to say what the Committee would like

in terms of information to allow the Committee then to express a view on it. I personally am content that we proceed, but I still would like some clarification of some of these things. In principle, of course, I want this to happen, but there are a few issues that we need to bottom out before I and — maybe I am speaking out of turn — all the members feel comfortable to give an opinion right now.

I am content that we leave it at that. The Committee will explore this a bit further, and then we will write to the Department.

Mrs Galway: We will get back to you on that.

The Chairperson (Mr Givan): OK, members? I thank all our witnesses who came forward. We very much appreciate that, thank you. Cathy, I wish you well in your new role.

Mr Dunne: Well done.

Mrs Galway: Thank you. It is very interesting, and we will get back to you as quickly as possible on those issues.

The Chairperson (Mr Givan): OK. Thank you.