



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Protection of the Police and Public, Courts  
and Sentencing Bill Legislative Consent  
Motion: Department of Justice

14 January 2021

# 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)  
Mr Doug Beattie  
Ms Sinéad Bradley  
Ms Jemma Dolan  
Mr Paul Frew  
Ms Emma Rogan  
Miss Rachel Woods

**Witnesses:**

Ms Maura Campbell	Department of Justice
Mr William Dukelow	Department of Justice
Ms Sharan Dustagheer	Department of Justice
Mr Brian Grzymek	Department of Justice

**The Chairperson (Mr Givan):** Maura, I will let you introduce your team. You can then give us a briefing on the legislative consent motion (LCM), and there will be some questions from members afterwards. Hopefully, Maura, you can hear us OK.

**Ms Maura Campbell (Department of Justice):** Hi, Chair. Can you hear me OK?

**The Chairperson (Mr Givan):** Yes, we can hear you fine. We have no visual, but that is OK, as we can hear you.

**Ms Campbell:** OK. Thank you very much indeed. I will start by introducing those who are with me, particularly as you do not have a visual. I am joined by Brian Grzymek, who is the head of the criminal justice, policy and legislation division, and by William Dukelow and Sharan Dustagheer, who are also part of the policing, policy and strategy division. I will start, Chair, by thanking you and the Committee for your willingness to take this item of business, as it was arranged at short notice. That is really because we are working to the tight timescales that have been set for us by the Home Office and the Ministry of Justice, which are jointly taking the Bill through Westminster.

I think that some of us just figured out how to turn the camera on, so, hopefully, you can see us now.

There are three unrelated matters in the Bill that engage the legislative consent motion. I will speak to two of those: first, the amendments to the Crime (Overseas Production Orders) Act 2019 (COPO Act); and, secondly, the provisions that relate to the National Driver Offender Retraining Scheme (NDORS).

I propose to then hand over to Brian so that he can say a few words about the provisions that relate to the management of sex offenders.

Starting with the Crime (Overseas Production Orders) Act 2019, members may recall that it is:

*"a UK-wide Act with provisions which relate to both reserved matters ... and devolved matters ... The Act creates a standalone legal regime for UK law enforcement agencies and prosecuting authorities to obtain electronic data directly from overseas communication service providers for the purposes of criminal investigations and prosecutions, through applying for an overseas production order.*

*The development of the Act was a pre-requisite for the UK to progress a data access agreement with the United States of America, which will enable UK law enforcement and criminal justice agencies access to information held by service providers who process, create, store or communicate electronic data on behalf of UK persons. It will also enable the UK to enter into similar agreements with other international partners."*

The Act will be commenced for Northern Ireland in February, and the PSNI has been working with the Home Office on plans for implementation.

The Home Office has advised that, during the implementation planning, some practical issues were highlighted that required it to make some legislative amendments. First, an amendment to the Act is required to allow appropriate officers to access and obtain communications data that is associated with the content data; for instance, details of who sent an email, the date and time that it was sent and from what IP address it was sent. A further amendment will allow orders to be served by a third party. Currently, an overseas production order is required to be served by the Secretary of State for England, Wales or Northern Ireland or by the Lord Advocate for Scotland. That mirrors the process in mutual legal assistance in which the Home Secretary and Lord Advocate perform a role in outgoing and incoming requests. The proposed amendment will provide the Home Secretary with the flexibility to delegate tasks related to serving an overseas production order (OPO) to an appropriate body; for example, one that has the required technical and secure capability to transmit data of this kind. The final amendment will rectify an omission from the original Act. During the parliamentary process, an amendment was inserted that requires the judge to be satisfied, before approving the overseas production order, that the electronic data requested is likely to be relevant evidence. However, a consequential amendment was not included at the time to make reference to that relevant evidence test.

I turn to the National Driver Offender Retraining Scheme. Members will be familiar with the arrangements that we already have in place whereby somebody who is caught speeding can, in certain circumstances, undergo a driving course as an alternative to paying a fine and having penalty points put on their driving licence. The Bill would amend the Road Traffic Offenders (Northern Ireland) Order 1996 to put that scheme on a statutory footing. The legislation will provide powers to charge fees for courses and to make regulations. We have been working closely with the Policing Board, the PSNI, the Department of Finance and other relevant stakeholders on the application of the provisions to Northern Ireland. The fees that are charged for the courses in Northern Ireland are greater than the running costs. The Bill would permit the excess fee to be used for a purpose connected with the imposition of the fee, which is the promotion of road safety. We are separately in discussion with the Department of Finance with a view to seeking agreement on how that would work in practice.

To conclude on those two sets of provisions, the Minister considers it appropriate that all the amendments are enacted in the Westminster Bill. The changes to the Crime (Overseas Production Orders) Act are technical amendments to the original provisions that were already enacted by Westminster. Putting NDORS on a statutory footing will formalise what is already happening in practice and ensure consistency across the UK. It will also open up the opportunity for us to seek to use excess fees for the purposes of promoting road safety, subject to the outcome of the discussions that are still under way with the Department of Finance.

Chair, I am happy to take questions on those provisions now, or I can hand over to Brian to complete the introductory briefing.

**The Chairperson (Mr Givan):** For the sake of completeness, we will go to Brian for him to do his bit.

**Mr Brian Grzymek (Department of Justice):** The element of the Bill that relates to my areas of interest contains legislative proposals to amend the Sexual Offences Act 2003. They provide for the UK-wide enforcement of new civil prevention orders relating to the management of sex offenders that are soon to be introduced in Scotland. Two new Scottish orders — the sexual harm prevention order (SHPO) and the sexual risk order (SRO) — replace existing civil preventative orders previously made under the 2003 Act and are in line with a similar approach that was adopted in England and Wales a few years earlier.

The new Scottish orders were legislated for in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016, but that legislation is yet to be commenced. Scotland has been reluctant to introduce the new orders until relevant legislative provision is in place across the rest of the UK to allow for their effective management and enforcement. That is considered essential regarding sex offenders subject to a new order who may move to another UK jurisdiction during the lifetime of that order. The changes proposed in the Bill are consequential to the commencement of the Scotland orders. Without them, the new orders will not be enforceable across the UK. In practical terms, that would mean that individuals subject to orders imposed in Scotland could move to Northern Ireland or to England and Wales and evade the prohibitions imposed by the orders. A breach of the orders in Northern Ireland or England and Wales would not constitute a criminal offence, and notification requirements resulting from the orders would apply only in Scotland. Therefore, the individual would be a registered sex offender only in that country.

In addition to those provisions, a legislative gap has been identified affecting the cross-jurisdictional management of sex offender civil prevention orders in the UK that needs to be addressed. Provision has been made to enable the Northern Ireland courts to vary a sexual harm prevention order or a sexual risk order made in England and Wales. That was provided for at the time of their introduction. However, no reciprocal provision was made to allow the courts in England and Wales or in Scotland to vary the equivalent Northern Ireland orders, which are sexual offences prevention orders (SOPOs), risk of sexual harm orders (ROSHOs) and foreign travel orders (FTOs). The Bill will contain provisions to close that legislative gap. The reciprocal provisions, combined with those that allow for the recognition of the new Scottish orders in Northern Ireland, should ensure more consistent and effective management of sex offenders across the UK jurisdictions, enhancing and strengthening public safety.

To summarise, the provisions of the Bill that are being made on foot of the Scottish plans will help to avoid a legislative gap in the cross-jurisdictional management and enforceability of civil prevention orders for sexual offenders. Specifically, they will ensure that an order can be varied, discharged or enforced by respective jurisdictions regardless of where in the UK it has been made. That is critical to managing sex offenders, who, clearly, can move within UK jurisdictions. The variations and discharge powers will enable courts to tailor an order's conditions to better suit the new environment. Where a sexual offender moves to another jurisdiction, their previous restrictions can be varied to make sure that they are appropriate to the new location. The proposed new breach powers will also be imperative for effective law enforcement management.

That is as much as I want to say for the moment. I am happy to answer questions on any aspect of the proposals.

**The Chairperson (Mr Givan):** Thank you, Brian and Maura. I have a couple of procedural questions first and then a couple on substantive points. Usually, an LCM comes forward when the final amending stage at Westminster is about to be concluded. Obviously, this one is being brought forward much earlier. Is there a reason why the Department is seeking approval for an LCM at this stage of the process at Westminster?

**Ms Campbell:** We were responding to the request that we got jointly from the Home Office and Ministry of Justice Ministers, who had asked for confirmation before the date of introduction that we had sought the agreement of our Committee and the Executive to bring forward a legislative consent motion memorandum. Obviously, further stages will need to be gone through, and there will have to be a debate on the motion in the Assembly, which is likely to be some time in February.

**The Chairperson (Mr Givan):** OK, so this is more about seeking the Committee's view in principle as opposed to the substantive LCM. Obviously, that would have to come at the appropriate stage so that Assembly Members know exactly what it is that they are consenting to.

**Ms Campbell:** Yes. I am also aware that we do not yet have a final draft of the Bill that is being introduced. We have seen drafts of clauses, but, as I understand it, those are still being worked on. We would not expect anything more than that at this stage, given that you have not had sight of the relevant provisions.

**The Chairperson (Mr Givan):** OK. It is helpful to know that.

I want to ask you about the driving-related aspects and the fees. Do we know how much the current fee is to complete one of the training courses?

**Ms Campbell:** It is currently set at £84.

**The Chairperson (Mr Givan):** That is in excess of the cost of administrating and providing the course: is there a reason for that?

**Ms Campbell:** I am just turning to Sharan to make sure that she has nothing that she wishes to add. My understanding of the rationale is that the fee should be set at a level that is in excess of the cost of administering the course. The fee should also not be lower than the penalty that someone could attract if they were to take the fine and the penalty points. Have I missed anything, Sharan?

**Ms Sharan Dustagheer (Department of Justice):** No. That is right.

**The Chairperson (Mr Givan):** It is a combination of cost recovery plus an element of penalty associated with the offence.

**Ms Campbell:** Yes.

**The Chairperson (Mr Givan):** The fees have been in place since the scheme was introduced in 2010. Is there not a way to bring forward changes to the fees through the current legal framework in Northern Ireland as opposed to through an LCM?

**Ms Campbell:** I think it is the case across the UK that there is currently no legal footing for this scheme. I think it was the Home Office that flagged that up a few years ago and proposed that it would be prudent to put a scheme in place. The thinking is that we do not have something that we can use for that purpose at the moment; it is all done on an administrative basis, as far as I am aware.

**The Chairperson (Mr Givan):** I assume that the Assembly's ability to legislate for this has been considered by the Department of Justice. Will you give me a brief summary of why the LCM is the most appropriate vehicle? Is it purely down to speed, or does it also have anything to do with jurisdictional issues, devolution and so on?

**Ms Campbell:** It is really to do with the speed of response, Chair. Technically, we could do it through the Assembly, but it makes sense, given that the scheme is identical across the UK, to take the opportunity to use this vehicle. It also ensures that the legislation is as consistent as possible for all the participating jurisdictions.

**The Chairperson (Mr Givan):** OK. Maura, thank you. I will bring in other members at this stage. Linda, just make sure that you are unmuted. We have not picked you up yet.

**Ms Dillon:** Can you hear me now, Chair?

**The Chairperson (Mr Givan):** Yes, Linda. We can hear you now.

**Ms Dillon:** Apologies for that. Before I start, I want to reciprocate the remarks that you made at the beginning of the meeting and wish everyone a happy new year — the officials, members of the Committee and our Committee staff. Hopefully, this year will not be as challenging as last year, but I would not count on it.

I have a couple of questions. Just to clarify, at the moment the surplus for those who avail themselves of the driver offender retraining scheme has to be returned to Treasury. The legislation will ensure that that is used for schemes or initiatives here on road safety: is that right?

**Ms Campbell:** That is the intention. It will give us the power to allow it to be retained here, but, as I mentioned in the opening comments, we are still discussing the detail of how that will work with the Department of Finance because it has an approval role here. The intention is that it would have to be used for advancing road safety initiatives. That is why we have been engaging with the Road Safety Partnership and the organisations represented on it.

**Ms Dillon:** The National Technical Assistance Centre (NTAC) has been identified as the best place to carry out the operations. What was that based on, and who will be responsible for authorising the overseas production orders?

**Ms Campbell:** That relates to the overseas production orders and the amendments that have been made to those.

**Mr William Dukelow (Department of Justice):** I will come in on that. I will take your second question first. The authorisation of the orders will be done by a Crown Court judge in Northern Ireland. That is the same process as currently exists for the mutual legal assistance route. The NTAC was chosen because of its capacity to provide a secure route for this sensitive data, which could be used in criminal prosecution cases. It already has the level of security required to transmit the data from this country to the United States, for example. The agreement that the UK has signed with the United States refers to the need for a very secure arrangement for the transmission of that data, mainly from the US to the UK, because, in most cases, it will be a US company, for example, Google or similar social media companies, that is expected to provide the UK with the information.

**Ms Dillon:** OK. What would the next steps be if the legislative consent motion were not granted? I am not suggesting that it would not be; I am just asking the question.

**Ms Campbell:** On that specific element, it would mean that those seeking the information would have to make a dual application. When we last spoke to the Committee about the Act, we explained that this is a streamlined version of what already happens. At the moment, there are routes to obtain that information, but this just streamlines it and makes it easier for it to be dealt with through a single application.

**Ms Dillon:** Thank you to the officials for their answers.

**Miss Woods:** Happy new year to everybody: 2020 feels like a lifetime ago. I have questions on the data agreement. You mentioned the agreements signed between the UK and the US. Is that the designated international cooperation agreement? If so, when was that signed?

**Mr Dukelow:** It is the agreement on data access. That is the terminology that I have. Just let me get the date for you.

I cannot find the date here.

**Ms Campbell:** It was signed in 2019, I think.

**Mr Dukelow:** It was signed in 2019. It has been going through a process in Westminster and the US Congress since 2020. It has not completed that ratification process. In effect, it will not come into operation until later this year. It has not been passed.

**Miss Woods:** Thank you. That was my understanding: that it had not gone through Congress yet, so I was wondering how it would play out if it had not been passed by the Houses in the States. Given where we are with Brexit, how will the amendments to the Act operate within the general data protection regulation (GDPR)? Are there oversight mechanisms to ensure that the data is transferred and accessed in compliance with GDPR?

**Ms Campbell:** Under data protection legislation, there are existing exemptions for material that is for the purposes of the investigation or prosecution of a crime. That probably covers the GDPR aspect.

**Miss Woods:** That is fine. On the driving offender scheme, I appreciate that you mentioned that you do not have the detail on how the funds would be allocated and administered and that that will be

subject to further discussions with the Department of Finance. Will the policing and community safety partnerships (PCSPs) be involved in that? They already have a big role in administering funds for road safety schemes, so I wondered whether they will be involved.

**Ms Campbell:** We could engage with the Road Safety Partnership on that. I am not familiar with whether it is already using the PCSPs as part of the delivery of its schemes. We are happy to pick up on that.

**Miss Woods:** That is great. Thank you.

With regard to the consultation, the paper in the pack states that the Policing Board and the PSNI are content with the proposal. Has any other consultation been done?

**Ms Dustagheer:** Yes. We consulted the Northern Ireland Courts and Tribunals Service (NICTS), the Department for Infrastructure and the Office of the Police Ombudsman for Northern Ireland.

**Miss Woods:** Thank you.

**Ms S Bradley:** Happy new year, all. To go back to the point about the data access agreement with the United States of America, the submission states that it:

*"will enable UK law enforcement and criminal justice agencies access to information held by service providers who process, create, store or communicate electronic data on behalf of UK persons".*

Is it fair to say that that is one piece of an access agreement, and the scope would be much broader, so the LCM being sought is speaking to a wider piece? Am I clear on that?

**Mr Dukelow:** No. I think that the LCM is being sought on the narrower piece in relation to the COPO Act. I am not aware of everything in the data access agreement, but I suspect, as you say, that the data access agreement is much wider than the element that relates to the COPO Act. It is just the amendments to the COPO Act 2019 that are in relation to the LCM.

**Ms S Bradley:** OK, I appreciate that. I imagine that the access agreement would be much wider and, potentially, taking things like health service data, but I will not elaborate on that.

Honing in on the criminal justice agencies part of it that the LCM is seeking, I understand what you were saying: Google or big US-based organisations are an obvious grab. Is there an example of a reciprocal arrangement, the effect that this will have, from the UK to the US?

**Mr Dukelow:** I am not aware of any UK-based company of any significance that would be affected by this. All the social media companies that we can think of are based in the US.

**Ms S Bradley:** So, what is the interpretation of "communicate electronic data"? I thought that maybe I was missing something. That is fine. I am not overthinking it, then. The electronic data is about the profiling of a person as well as how they have exchanged information.

**The Chairperson (Mr Givan):** Maura, can you clarify for me where we are? You want an indication on the principle of the LCM but not the substance, because we do not have that yet. The Department has been engaging with the Business Office on the LCM being tabled in the Assembly. Can you be more specific as to the time frame for that decision?

**Ms Campbell:** Until we know definitively the proposed introduction date for the Bill, we are working on a provisional timetable. I am mindful that a request similar to the one that we have made to you has gone to today's Executive meeting, so we need to see the outcome of that.

Assuming that the Bill is introduced next week, which seems likely, we would consult the Executive Office on the wording of the LCM memorandum and then seek our Minister's approval to lay it. We would then have to lay it with the Business Office, probably in the week commencing 25 January, and then look for a slot for a debate, which, I anticipate, might be the week commencing 8 February. We can confirm the timeline once we have firmer dates.

**The Chairperson (Mr Givan):** Just make sure you factor in the fact that the Committee has to do its work and provide a report to the Assembly on its position on the LCM, so your time frame will need to take that into account. If the Department proceeds with the LCM, and the Executive give the go ahead for it, that is fine. That will be an indicator that the Committee will go down that route as well, so your first staging post on this is probably Executive approval for the LCM approach. It will then come to the Committee, and we will need to do our work on it.

**Ms Campbell:** If any clarification is needed from us once we have the text of the Bill that will assist you in producing your report, we are happy to make ourselves available or to provide a written briefing, as you need us to.

**The Chairperson (Mr Givan):** OK. If the Department can formally come to the Committee once the Minister has navigated it through the Executive, the Committee will, at that point, decide whether to support the LCM, and then we will be able to scrutinise it. That seems the best approach.

Do members want to make any other comments? Is the Committee content that we have noted the briefing, that the Department will come to the Committee following its work with the Executive and that the Committee will then take its position on the substance of the LCM? Do members agree with that approach?

*Members indicated assent.*