



Northern Ireland  
Assembly

Committee for Justice

# OFFICIAL REPORT (Hansard)

Criminal Justice Bill - Second Legislative  
Consent Motion: Department of Justice

9 May 2024

# NORTHERN IRELAND ASSEMBLY

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Criminal Justice Bill - Second Legislative Consent Motion: Department of Justice

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**Members present for all or part of the proceedings:**

Ms Joanne Bunting (Chairperson)  
Mr Doug Beattie  
Mr Stewart Dickson  
Mrs Ciara Ferguson  
Mr Justin McNulty

**Witnesses:**

Ms Lorraine Ferguson-Coote      Department of Justice  
Dr Veronica Holland                Department of Justice

**The Chairperson (Ms Bunting):** I welcome from the Department of Justice Veronica Holland, who is head of organised crime branch, and Lorraine Ferguson-Coote, who is from the criminal policy unit. I invite you to give your presentation, ladies. I am sorry to have kept you waiting. We are running slightly behind.

**Dr Veronica Holland (Department of Justice):** That is no problem at all.

**The Chairperson (Ms Bunting):** We were keen to hear about the programme on paramilitarism and organised crime, so thank you for bearing with us.

**Dr Holland:** I appreciate that. Good afternoon. Thank you for the further opportunity to brief the Committee on the legislative consent motions (LCMs) associated with the Criminal Justice Bill. You are already aware from the previous briefing session of the nature of the provisions that are to be covered by the LCMs. I will give a bit of background and context on our timings, processes and that type of thing, and I will then very briefly set out some of the provisions. I am conscious from the discussion that we had the last time that the Committee is particularly interested in the processes and the way in which they operate, as much as in the content.

By way of update on the first LCM, we hope to have the paper on that considered and agreed by the Executive in two weeks' time, all being well. That is two weeks from today. Following that, we will then lay the associated memorandum on the areas that are agreed. That will then trigger your processes for Committee consideration, whereby you have 15 days to report. Hopefully, subject to things being OK, we can have a debate on that tabled for late June and get the LCM passed before summer recess.

I will provide an update on timings generally for the passage of the Bill through Westminster. As members are aware, broadly speaking, the second LCM deals with confiscation reforms and a number of sexual offending provisions. Again, as when we were last here, I will make it clear that a distinct

number of issues will be covered by that LCM. If there were to be anything further added at a subsequent point, it would be the subject of a further LCM. Hopefully, we will not be in that territory, but I just want to make that clear. I will set that out again as we go through the session.

In the paper that we provided, there was an update on the timings for and progression of the Bill. On the indicative timings for the House of Commons legislative stages, I can tell the Committee that Report Stage has now been confirmed for Wednesday 15 May. That is to a three-week delay to the timings that, I think, we indicated the previous time we were here. We also envisaged that the second day of that House of Commons Report Stage would have been in the same week. We understand that it is likely that that second day will now be the next week, so, in total, there will have been about a four-week delay to that stage of the Bill as it progresses through the Commons. As I noted the previous time, that is likely to increase pressure on the time frame for the passing of the second LCM. While, typically, it would be the case that that time would be added to the end of the process, with an election looming in the autumn, there is essentially a cut-off point, so whatever additional time is being incurred at this stage will have to be made up in the later stages of the process. I just want to flag that for members' attention.

We are hopeful that it will be possible to have the second LCM passed after the summer recess, hopefully at some point in September. The difficulty at the moment is that we are not entirely clear on firmer dates for the subsequent stages in the Commons and the House of Lords, but we will hopefully get those shortly, and, as needs be, we will advise further on any impact that those dates will have on the Assembly's consideration later in the year.

As I have noted, to reassure members about the content of the second LCM, the Minister is conscious and appreciates from the previous session that there are concerns about late-stage amendments being tabled, by which I mean things being added and it not being clear what the Assembly is being asked to agree. As I say, on the first LCM, there were the six issues that we looked at last time; for this LCM, there are four areas. Anything further would be the subject of a third LCM that we would come back to you on. As I say, hopefully we will not be in that territory, but I just want to be clear about what is being dealt with.

We hope that the amendments relating to the second memorandum will be tabled at some point in June. We will seek Executive agreement on those and then table the second memorandum for consideration by the Committee and a subsequent debate. It is our intention to lay the second memorandum once the amendments have been tabled. Normally, as is the case with the first memorandum, that is done when the amendments are agreed at the appropriate stage by the House of Commons or the House of Lords, but, because we are in second LCM territory, it is possible to lay the memorandum once the amendments have been tabled rather than wait until they have been agreed. The purpose of that is to ensure that the Committee has as much time as possible to consider the provisions. Waiting for the House of Lords to agree the amendments would probably make it about a month later, and that would obviously eat into the time available for it. Standing Orders provide for us to do that. There is also a provision that enables us to lay the second memorandum when the amendments are known about, before they have been tabled, but we are not keen to do that; rather, we are keen to ensure that there is a printed text of the amendments and that they have been tabled in the House.

The other thing that we want to flag about the second memorandum is that the Minister is keen, as the Committee will be, to ensure that there is adequate time for it to consider the second memorandum in order to report to the House before a debate is held. Should the timings not facilitate that, however, it may be necessary for us to schedule a debate before the Committee has reported on the second LCM. I do not think that any of us wants to be in that territory; it is certainly not our intention. Depending on what way those timings are going, if the consequence is that it is not possible to have the memorandum considered and agreed by the House before the final amending stage, there may be a necessity to table a motion for debate on the second memorandum before the Committee reports. I hope that we will not have to do that. It is very much a fallback position, and hopefully the timings will facilitate consideration in the normal way. It is just to flag that and make the Committee aware of it. Again, it is permitted under Standing Orders, but it really would be a fallback position for us to take only if the timing for the passage of the Bill through the House of Lords dictated it.

I know that the Committee has a busy schedule this afternoon, so, having given an overview of where we are with the timings of the various bits and pieces, I will briefly set out the four areas that the LCM deals with. Lorraine and I are more than happy to answer any questions that you may have. As we said at the outset, there are four areas, the first of which deals with confiscation reform. That builds on

the confiscation reforms that the Proceeds of Crime Act 2002 put in place. The other three areas deal with sexual offending.

The confiscation reforms are intended to further improve the powers that are used to strip convicted criminals of their proceeds of crime. I will briefly set out half a dozen key aspects of the reforms. The first aspect introduces a statutory objective for the confiscation regime, which is to deprive a defendant of benefit from crime. The next aspect is about prioritising victims' interests in order to better prioritise compensation for victims and legitimate third-party interests. A third aspect relates to early resolution of confiscation by narrowing the issues in dispute and fast-tracking agreed orders through the process. A fourth aspect is about making it easier to retain assets and preserve their value during an investigation. A further aspect introduces confiscation assistance orders so that confiscation orders can be enforced promptly, and a sixth aspect enables the provisional discharge of confiscation orders where there is no realistic prospect of recovery. As I said, the measures very much build on the systems and processes that have been in place since 2002 under legislation for proceeds of crime, confiscation orders etc. They are about trying to improve, streamline and make more effective the confiscation process that enables us to seize and deal with criminal assets.

The second area potentially deals with three aspects of the sexual offending provisions. The first key area relates to amendment of the registered sex offender notification requirements, which are commonly referred to as the "sex offender register". That will require registered child sex offenders to notify police before entering specified premises where children are present. It will also allow the police to proactively review the need for indefinite notification requirements after the minimum notification term has elapsed. It will enable applications for warrants to search a registered sex offender's home address to be made by an officer of a lower rank than at present, which changes current processes. It will enable police to authorise registered sex offenders to give notifications virtually, rather than in person, in certain circumstances. It will also require a relevant registered sex offender to notify the police of an intended change of name seven days in advance of their using it, and it will require a registered offender to seek police authorisation before applying for certain identity documents in a new name. Those are some of the key elements of the registered sex offender notification requirements.

The second area of sexual offending relates to the creation of a new offence of making a sexually explicit deepfake image of an adult without consent. The Committee will be interested to know that protections for children are already captured in existing legislation, which is why the measure focuses on adults. Key features include that the image could be mistaken for a real image of the person depicted and that it will have to show something that is sexually explicit. It will also have to have specific intent elements, in order to avoid over-criminalisation.

The third area relates to the extension of the scope of the current possession of a paedophile manual offence. While final decisions have still to be reached by the UK Government on that, if it were to be brought forward by them, we would be keen that it be extended to Northern Ireland. That provision would bring AI-generated images within the scope of the current offence.

That is a quick run through where we are with timings, the two memorandums, the process of the Bill going through Parliament and a brief overview of the four areas that are to be included in the LCM. Lorraine and I are happy to take any queries, or perhaps there is something that you would like further explanation of.

**Mr Dickson:** I have one brief question: setting aside the prospect of a general election, the Westminster timetable is different from ours, in that it runs on to late July. Have you factored that into the considerations?

**Dr Holland:** Yes. We very much appreciate that, and it is something that we touched on last time. As you say, we will go into recess in early July, whereas Parliament will go on into late summer. In addition, while we will start at about the same time in the autumn, my understanding is that their plenary sittings will start a week earlier than ours. All of those issues increase the complications and the time pressures associated with the passage of the LCMs because, as you say, Parliament will continue while we will have stopped. As I said, I am hopeful that we will get the first memorandum passed by the summer. I would like to think that, subject to the necessary approvals and firmed-up timing in terms of when those amendments are tabled, we could get the second one passed after summer recess. However, it is important to flag up that possibility with the Committee. It is not a position that we would want to be in, but it may not be possible to afford the Committee that full 15 days to consider that second memorandum and report on it. That is very much a fallback position for us. I am conscious of the slightly different time frames for the two jurisdictions.

**Ms Ferguson:** There are, once again, concerns about not being able to scrutinise, and dates have now been put back. Likewise, what amendments may come forward from a private MP or the House of Lords or whatever? It is difficult.

I have a couple of questions. In the report as well, what work has been done on the potential human rights impact and equality implications of extending the provisions here? Will there be any equality screening on that? That is one thing. Likewise, what discussions have there been on the financial implications of extending the provisions here? It is fine and dandy to legislate and follow through, but what are the financial implications? There is no point in following through if the provisions cannot be implemented: we then have legislation that is lying for years and is never implemented. It would be useful to have further information on those two areas.

**Dr Holland:** I am more than happy to run through those queries. In terms of further amendments, the Minister is conscious of the previous discussion that the Committee has had. As they are at the moment and as they will be taken forward, the first LCM has six distinct areas, and the second LCM has four distinct areas. The fourth one may or may not happen, depending on discussions with the UK Government. We are not aware of any further things that are being proposed for extension to Northern Ireland, but, if there were any, they would have to be the subject of a further, third LCM, on which we would need to come back to the Committee and the Executive. At this stage, we do not envisage that there will be anything. To be fair, we do not know what the position may be, but we want to make it clear to the Committee that, at this point, six areas have already been agreed for the first LCM and four areas, which we have just outlined, have been agreed for the second LCM. Anything additional that does not relate to those areas would require an additional, new LCM, and we would come back to you on that. I hope that we will not be in that position.

On the equality and human rights consideration, we have undertaken an equality screening. We have also looked at the human rights aspects, both generally and because of the previous query that the Committee had on article 2 of the Windsor framework. We have had advice from the Departmental Solicitor's Office (DSO) on that, and we are content that the LCM complies with article 2 of the Windsor framework. We have looked at human rights issues more generally in relation to the Bill and have taken account of the assessments that have been undertaken by the Home Office and the Ministry of Justice in relation to that. We are also seeking views from the Human Rights Commission about the Bill and engaging with the Attorney General's office on some of its provisions. Generally, from a departmental perspective, we are content that the Bill's provisions are human rights-compliant. We have undertaken the equality screening, and that has been screened out, so a fuller impact assessment has not been undertaken. We have, however, considered both of those aspects and article 2 of the Windsor framework as part of the deliberations.

Our sense at this stage is that there should not be significant financial implications associated with the provisions. On the confiscation reforms, if the changes are made to improve, strengthen and streamline the system, we should see additional moneys coming through that route from additional seizures made as a result of some of the powers that are being introduced.

**Ms Lorraine Ferguson-Coote (Department of Justice):** With the register of sex offenders, for example, the notification requirements build on an established framework. Some of the amendments will improve their efficiency. Virtual notification, for example, will save police time, as will the proactive review of indefinite notification for offenders who do not have to make an application. That will help out. We hope that the paedophile manual amendment will be minor. It will simply extend the scope of the definition to bring AI images within the scope of that offence, which is already established. Additional resource will be applied to the deepfake offence, but we do not think that that will be significant. We have spoken to the Public Prosecution Service (PPS) and the police about that.

**Dr Holland:** Sorry, Lorraine. On your point about building on things that are currently in the system, two of the significant aspects of the Bill on my side are the confiscation reforms and the serious crime prevention orders. As Lorraine said, for some of her areas it is about building on measures and systems that are already in place. Some aspects of the Bill relate to new offences but other aspects are strengthening, improving and building on measures and systems that already exist and have been in place for quite a number of years.

**Ms Ferguson:** Thank you

**The Chairperson (Ms Bunting):** Just a couple of things for me. Part of our consternation is that we are between a rock and a hard place. We do not want Northern Ireland to be the weak link in the UK if

we do not agree to some of this stuff. The other side of it is the unknowns. It is such a wide-ranging Bill and is not narrow in scope, and therefore amendments on anything could come from anywhere or anybody. That is our concern in this because of the nature of the Bill. We do not have those concerns to the same extent around other LCMs. It is because this is such a wide-ranging Bill. We note that you have said:

*"The Minister would like to reassure Members that there are no further amendments being considered for extension to Northern Ireland at this time that they are not already aware of"*

or that you are not already aware of. This is our internal paper:

*"All intended material Government amendments will be made to the Bill by House of Commons report stage".*

The paper notes the potential for currently unknown responsive amendments to be made in the Lords. That is our fear: the unknown responses. Are you getting wind of anything that could cause us concern? The *[Inaudible]* —

**Dr Holland:** There certainly is not anything —.

**The Chairperson (Ms Bunting):** — principle, we are fine, by and large.

**Dr Holland:** There is certainly nothing being flagged with us by our counterparts in the Home Office or the Ministry of Justice. Typically, they tend to give us a heads-up if there is something that they are aware of or something that they may be considering bringing forward as part of the process. Nothing additional is being raised with us at this stage. That is not to say that there could not be something put forward that the Government would want to accept. What I stress is that, if there were to be further additional amendments, they would not form part of either of these LCMs. There would have to be a further LCM coming back to the Committee and the Executive in relation to that. We are certainly not aware of anything at this stage, and I am hopeful that we will not have further amendments that are being extended to Northern Ireland.

Even if amendments are accepted by the Government and the House as part of that process, the Minister will, in the first instance, have to consider whether that is something that she would want to see extended to Northern Ireland or whether it should be legislated for locally. At this stage, we are not envisaging further provisions being brought forward for extension to Northern Ireland. I just cannot definitively rule that out. The Minister is conscious of the concerns that have been raised by the Committee and the discussion at the last meeting about additional things. We want to be clear that the LCMs both deal with specific, predetermined issues that we have come to you to get views on. There will not be further things added to those LCMs as such.

**The Chairperson (Ms Bunting):** No, but I suppose that the nature of it is that if there is an additional subject matter, the Minister will decide and then it will be the subject of a third LCM. The issue is that, if there is a random amendment that could be concerning to us and that appears as part of the things that we have already agreed in principle, where does that leave us? There are two aspects to that. That is where part of our concern also lies, and to what extent we would be consulted on that, and the Assembly consulted on that.

**Dr Holland:** Certainly, if there was anything further in those —. By the nature of the LCM, it is the heading in the legislation that is used for that. If there were to be anything new and material being added, we would be coming back. As I say, it is very much the things that have already been flagged to the Committee that will be covered by the LCMs. I think, from what you are saying, Chair, if there were to be something additional in those areas, it is not that that would simply be slipped in.

**The Chairperson (Ms Bunting):** It is still controversial, Veronica. If there is something in there that could be divisive —

**Dr Holland:** Yes.

**The Chairperson (Ms Bunting):** — here that may not be divisive somewhere else, to what extent will our views be sought? That is our fear in this, in giving carte blanche to a massive Criminal Justice Bill. That is where we are coming from.

I have a couple of other points, then. What role will there be for us to scrutinise future subordinate legislation that may arise from these provisions?

**Ms Ferguson-Coote:** I will start with the registered sex offenders. There are quite a number of regulations within that, but they are mostly draft affirmative, so they will require an Assembly debate.

**The Chairperson (Ms Bunting):** There is a reference to the Home Office approaching Scotland because it, seemingly, will do its own thing. What conversations have been had with Scotland and Wales?

**Ms Ferguson-Coote:** First, with the registered sex offenders, Scotland is very much on board and is drafting instructions with the Home Office. As set out in our paper, that provides a very UK-wide and consistent approach to public protection so that sex offenders cannot evade the law across the jurisdictions. The paedophile manuals are sitting with the Home Secretary at the moment, but the soundings are that it will be accepted. It is a minor amendment and is for the good of protecting those areas where they use AI. Then, with the deepfakes, again, we have soundings from officials that the Cabinet Minister is on board with it but it just needs Cabinet support. Just as we need Executive support, they need clearance from the Cabinet, but they are on board as well, so we will be in sync with the rest of the UK in the sexual offending sphere.

**The Chairperson (Ms Bunting):** Thank you. Does any member have any further questions? OK.

That is great. I thank you both for giving evidence today. It has been helpful to us to make a decision.

**Dr Holland:** Thank you for your time.

**The Chairperson (Ms Bunting):** No doubt we will be in touch with where we are. Thank you very much indeed.