



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Prison Media Bill Legislative Consent Motion:
Department of Justice

9 May 2024

NORTHERN IRELAND ASSEMBLY

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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

Witnesses:

Mr Tom Ferguson	Northern Ireland Prison Service
Mr Alan Smyth	Northern Ireland Prison Service

The Chairperson (Ms Bunting): Gentlemen, you are very welcome. We have Alan Smyth, head of licensing, legislation and public protection; and Tom Ferguson, deputy director, security and operations. They will help the Committee out with any queries.

Gents, I hand over to you to make your presentation, and then I will open the discussion to members for questions, should they have any.

Mr Alan Smyth (Northern Ireland Prison Service): Thank you, Chair and members, for seeing us at short notice. We bounced the Committee into the meeting, and we humbly apologise for that, but the circumstances were beyond our control. I will get into the meat of the issue now.

As our memorandum explains, the making and uploading of media in and of prisons is a growing problem across Great Britain and here. In 2023, in England and Wales alone, there were 890 reported incidents, where content from inside prisons was found online. We have seen the start of similar incidents in this jurisdiction, although not to the same extent. However, in our experience, it is only a matter of time before we encounter problems of a similar scale. Tom will elaborate on our experiences to date in a moment.

This type of media can cause serious harm. It can, for example, promote and facilitate continued criminality, including drug supply, prisoner-on-prisoner violence and feuds. Violence in establishments can be fuelled by prison social media content, which can, in turn, be used to extort, threaten, bully and film retributions and reprisals. It can also harass and cause distress to victims and their families by showing perpetrators boasting about their crimes, and it can be used to intimidate and harass staff by showing images of them on duty and on their way into and out of work.

With those issues in mind, the Ministry of Justice in England and Wales is keen to close several loopholes in existing legislation using the Prison Media Bill. Our Minister, supported by senior management, is keen for those new powers and offences to be extended to Northern Ireland. I understand that the Scottish Prison Service (SPS) is keen to have the new offences extended to

Scotland and that the Scottish Cabinet Secretary for Justice and Home Affairs, Angela Constance, is taking similar urgent steps to put an legislative consent motion (LCM) in place there.

The Bill, introduced by Conservative Back-Bencher Katherine Fletcher MP on 11 December 2023, is being supported by the UK Government. Initially, the plan was for it to apply to England and Wales, but, on further reflection, the Ministry of Justice has now sought permission from the devolved Administrations in Belfast and Edinburgh to extend it across the whole of the country. With their agreement, it plans to introduce Northern Irish and Scottish amendments when the Bill begins its Commons Committee Stage later this month.

The Bill is short, currently running to just three pages. Its aim is very straightforward: it plans to provide absolute clarity on the making and uploading of prison media. It will involve making changes to the Prison Act 1952, which applies to England and Wales, and, if it is extended to Northern Ireland and Scotland, to the Prison Act (Northern Ireland) 1953 and similar Scottish legislation.

There are two main parts to the proposed changes. First, it will make the unauthorised uploading to the internet of media created inside a prison, of the inside of a prison or of prison workers on prison land an offence, regardless of whether it was uploaded from prison or the community. That will help strengthen central government powers to force social media companies to remove such content from their various platforms. This part will create offences in the reserved field, given that they relate to internet services, so an LCM is not required for them.

The Bill also plans to strengthen existing legislation by addressing two current and related weaknesses in the devolved space. It is already an offence to bring a stills camera, a video camera or sound recording equipment into a prison. It is also an offence to use such equipment to take photographs, make videos or record sound where the operator of that equipment is inside the prison. However, it is not clear that it is currently an offence to undertake such an activity if the means of doing so is not located in the prison. The Bill clarifies the matter by making that activity an offence. That will address the relatively recent but ever-increasing use of drones — a problem that, I suspect, was not envisaged in 1953 when the original legislation was passed.

Furthermore, the Bill will also deal with a related issue by making it clear that it is an offence for an unauthorised person to intentionally take photographs or make sound recordings of a prison worker while that employee is on prison land. That will protect our staff while they are on prison property but not within the physical boundaries of the prison. Those of you who are familiar with Maghaberry, Magilligan and Hydebank prisons will appreciate how our staff could be susceptible to being photographed in and around the vicinity of our external gates. Those two straightforward amendments relate to prisons and offender management, which are in the devolved space. Therefore, an LCM is required for them.

I will now ask Tom to give you a little more detail about our experiences to date of uploaded unauthorised prison-sourced media.

Mr Tom Ferguson (Northern Ireland Prison Service): As Alan explained, media, including photographs, videos and sound recordings, created in and of prisons without authorisation can cause serious harm. Videos taken from above prisons using drones pose a particular security risk. Showing the layout of prison buildings in detail or staff and prisoner movements could facilitate criminals intent on smuggling drugs and weapons or facilitate escape.

For context, I would like to give you some examples of incidents that have been recorded by the Northern Ireland Prison Service (NIPS). While it is important to reiterate the scale of the problem, NI is not yet experiencing that at the level being experienced in England and Wales. Having the tools available to prevent it happening in this jurisdiction is why those minor legislative changes are important. That said, there already have been incidents where video and photo footage, including audio, has been taken in each of our three prisons. In each case, the recordings and their content were subsequently uploaded to social media, and that has the potential to impact upon the safety, security and good order of our prisons. It has placed our staff and those in our custody at risk and brought potential opportunity for further harm to victims.

Over the last three years, we have seen two incidents at Hydebank Wood College and Women's Prison, two incidents at Maghaberry prison and two incidents at Magilligan prison. The recordings and uploaded media have included content such as: filming our prison walls and fence lines; footage taken on prison property of our staff and audio requesting staff to identify themselves; footage of our main gates and access controls; video footage taken through fences showing internal infrastructure of our

prisons; audio describing the inside of our prisons using zoom lenses; footage and audio taken on our land of staff going to and from their place of work; and footage from drones flown over and capturing the layout and internal layout of our establishments. In one instance, when a drone was used, a zoom lens was able to capture the footage of the front door of a residential wing where the faces of staff and the name of the building were clearly identifiable.

The use of drone technology negates a key intention of the purpose of having physical imposing barriers around our prisons, which, in themselves, are designed to keep the public and prisoners safe and secure. The ability to have that type of footage accessible and uploaded on to social media also carries the risk of causing harm and distress to victims.

Thank you for your time. I am happy to take some questions.

The Chairperson (Ms Bunting): Thank you very much. Hearing you outline what has happened thus far is alarming, and I can understand the need for legislation such as this. Do members have any questions?

Mr Dickson: Briefly, Chair. With regard to the description of prison land and the reason that you define that is to protect prison staff who are going from the car park or whatever to property, but there are also circumstances where prisoners are outside the prison walls as part of their rehabilitation work. For example, some do external gardening work and things like that, but it is not on prison land. That is on other property. Are they protected as well?

Mr Smyth: Not under the current amendments.

Mr Dickson: Often, there is press interest in individuals who have been in prison for a long time and are coming towards the end of their sentences.

Mr Smyth: We can look at how privacy legislation can be used, but, for the purposes of this legislation, there is no plan to cover anything outside property belonging to the prison.

Mr Beattie: Does that include prisoners going to court and prison staff taking them to court and things like that?

Mr Dickson: Would it be on board the vehicle?

Mr Smyth: It is not included in the legislation.

Mr Dickson: You could have a drone sitting above a courthouse filming the usual scramble that you see, particularly if there is media interest in somebody being escorted from the courthouse and put into the back of one of your vehicles.

The Chairperson (Ms Bunting): Those are issues that we could flag up to the Department to raise with the Government in the course of the debate. When we receive an LCM like this, there are a couple of standard questions that we like to check and have the answers on the record. I will ask you about two aspects of subordinate legislation. First, will there be a requirement for the Secretary of State to consult the relevant Northern Ireland Minister before making any subordinate legislation in respect of devolved matters? Secondly, what role will the Committee have in scrutinising future subordinate legislation that may be made at Westminster?

Mr Smyth: There is no provision in the amendments to make subordinate legislation.

The Chairperson (Ms Bunting): OK. So, this is it. It is open and shut.

Mr Smyth: Yes.

The Chairperson (Ms Bunting): Are there any financial implications?

Mr Smyth: We see this as a deterrent rather than any prosecutorial avenue to be explored further. We want people to stop doing this and to be deterred from doing it, so we do not think that there will be any financial implications.

The Chairperson (Ms Bunting): Do you not think that there will be anything that requires you to take measures to cover things up or —?

Mr Smyth: We will probably do the usual and change our signs outside our establishments, which talk about what you cannot bring in, to say, "By the way, you cannot do these other things as well".

The Chairperson (Ms Bunting): The other thing that surprises me about this is that there are areas where drones are not permitted to fly. They just cannot take off. In airports, for example, drones are barred. Can that not be easily rectified by making prison land no-fly zones for drones, and then drones cannot take off or be in the vicinity?

Mr Smyth: Civil aviation is a reserved matter, so it is a matter for Westminster to legislate that for us. It is something that we need to explore, but, for these particular purposes, this takes the trick even before that.

Mr T Ferguson: Just to add for context that the example that I gave at the end about drone footage is that the information that we received was that the drone was at a distance, so it was not over the prison, but the technology allows you to —

Mr Smyth: New drones can be flown by the camera on the drone; you do not have to see the drone yourself. You can fly it by using the camera that is on the drone. You can fly it out of sight but still see what it sees.

Mr T Ferguson: It is a valid point, but I am not sure that it would resolve that issue for us with regard to footage from beyond the walls and into the site.

The Chairperson (Ms Bunting): Yes. I am just thinking about drone licences, who is allowed to have them and who is not. I thought that, if drones flew into no-fly zones, they just dropped, but maybe not. I do not know.

Mr T Ferguson: My understanding is that there are registered drones. Drones that are flown lawfully will do that.

The Chairperson (Ms Bunting): Presumably, people who will engage in that kind of activity will not necessarily have registered or got a licence to fly their drone. That is fair enough.

I do not think that anybody has anything else. Do we? Ciara, sorry. Apologies.

Mrs C Ferguson: Obviously, on the face of it and in principle, it is fine. I refer to section 6 of the Clerk's memo, on

"Consultation and equality and human rights".

We have had a similar issue with other LCMs. Basically, it says:

"The Department has not indicated whether it has engaged with any justice bodies or other stakeholders on the implications of the extension of the provisions to Northern Ireland. It has not discussed financial, human rights or equality implications or noted whether an equality impact assessment was considered necessary."

Can you give us further information on that and the reasoning behind it?

Mr Smyth: The Ministry of Justice carried out its own equality impact assessment, and does not think that it impacts adversely on any particular groups. Obviously, we will do our own equality impact assessment in parallel to that, but I think that we would probably be stringing it out at this stage. That is just my take on it. The Ministry of Justice decided that it was not necessary to consult widely with the public because the amendments are so minor.

Mrs C Ferguson: I would not be content with that. A consultation process is the minimum that is required, because part of it is about educating the public on something that you are legislating for.

Mr Smyth: When this happens, we will make a full public announcement to tell people what they can do. We are just building on existing legislation. We are just tweaking it. We are not actually creating a whole new set of offences. We are just creating things on the margins of what has existed since 1953.

Mrs C Ferguson: Do we have any opinion from human rights or equality bodies?

Mr Smyth: No.

Mrs C Ferguson: Was it sought?

Mr Smyth: We are in quite a fast-moving situation, so it has not been sought yet, but we can certainly write to them and let them know what is happening.

The Chairperson (Ms Bunting): The other side of it is that the rights that are involved here are the human rights of prison officers not to be filmed, and to have security and safety.

Mr Smyth: And prisoners as well.

The Chairperson (Ms Bunting): Yes; not to be filmed, particularly, in circumstances where prisoners are filmed and, potentially, that footage is sent to their families in order to engage in nefarious activities against them, threaten them and so on. Does that not quell any of your fears, Ciara?

Mrs C Ferguson: Obviously, in principle, it seems fine, but you would like that expert opinion in case there is something you have not thought of.

The Chairperson (Ms Bunting): Have we got time to ask for and get a response?

Mr Smyth: You certainly have time to ask for and get a response, but things will move in parallel at Westminster at the same time. It is something that we could do in parallel to what is happening in London. We can certainly do that.

The Chairperson (Ms Bunting): All right. Gents, thank you very much. That conversation has been helpful. As you will appreciate, not all of us are technologically minded, so it was an interesting discussion. Once again, I apologise for keeping you late. You will appreciate that, once the first item runs late —.

Mr Smyth: It was an immersive experience. *[Laughter.]* We are happy to stay while the Committee discusses the LCM, in case you have further questions.