

DEPARTMENT OF JUSTICE

Written Ministerial Statement by Naomi Long, MLA Minister of Justice

Commencement of the Criminal Finance Act 2017 and the Crime (Overseas Production Orders) Act 2019 in respect of relevant provisions relating to Northern Ireland

When I was appointed Minister of Justice I set out my intention to ensure that in the two years left of this mandate I would make a real difference, including through measures to reduce harm within communities. Today marks a further step on the journey towards delivering that goal by ensuring that law enforcement agencies in Northern Ireland have effective legal powers to deal with the threat posed by crime, including serious organised crime.

Later today I will be writing to the Home Secretary asking that she commence the relevant provisions of the Criminal Finances Act 2017 ('the CFA 2017') for Northern Ireland, including new unexplained wealth orders, account freezing and forfeiture provisions and listed assets forfeiture provisions. I will also ask the Home Secretary to commence the relevant provisions of the Crime (Overseas Production Orders) Act 2019 ('the COPO Act 2019') which will ensure that law enforcement agencies and prosecuting authorities in Northern Ireland have the same powers as their counterparts in the rest of the UK to apply for and obtain electronic data from overseas service providers for the purposes of criminal investigations and prosecutions.

Background

The **CFA 2017** is a UK-wide Act with a mix of reserved (terrorist financing and tax) and devolved matters (assets recovery and powers to recover the proceeds of crime). The CFA 2017 makes legislative provision to provide law enforcement agencies and partners with new capabilities and powers to recover the proceeds of crime and to tackle money laundering, corruption and terrorist financing. The emphasis is on strengthening the existing provisions in the Proceeds of Crime Act 2002 to ensure that law enforcement agencies 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.

The Criminal Finances Bill received Royal Assent in April 2017 and the Act has been fully commenced in England, Wales and Scotland. In Northern Ireland, only provisions that relate wholly to reserved or excepted matters have been commenced. Steps were taken during the passage of the Bill to draft and secure agreement to a Legislative Consent Memorandum (LCM) for the provisions that relate to devolved matters. The Justice Committee was consulted and in December 2016 the Executive Committee approved the tabling of the LCM for debate. The draft LCM was laid at the Assembly Business Office in January 2017 pending a date for a motion but the Northern Ireland Assembly was dissolved before the debate could take place.

Rather than amend the Criminal Finances Bill so that it did not extend fully to Northern Ireland, Home Office Ministers decided to keep the provisions relating to devolved matters in the Bill and added provision for different commencement dates for the provisions in the different UK jurisdictions. In addition, the Home Office Security Minister made a commitment that provisions that either related expressly to, or touched on, devolved matters would not be commenced without the appropriate consent being obtained.

The **COPO Act 2019** is a UK-wide Act with provisions which relate to both reserved matters (e.g. telecommunications, foreign affairs/cooperation, counter-terrorism powers) and devolved matters (e.g. policing and courts). 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 US 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 received Royal Assent on 28 February 2019 and has been fully commenced in England, Wales and Scotland. In Northern Ireland, only provisions that relate wholly to reserved or excepted matters have been commenced. The commencement of the devolved provisions was held back pending the restoration of the Northern Ireland Executive.

Legislative Procedure

I have made the commencement of these provisions one of my key priorities since taking up office at the start of the year and have been determining the appropriate course of action to progress commencement in the context of enacted legislation. While there is no predetermined protocol to seek the retrospective consent of the Northern Ireland Assembly after the UK Parliament has legislated for devolved matters, it is important to ensure that before progressing to commencement I am assured that a sound and justifiable case can be made for commencing the relevant provisions in Northern Ireland.

The additional powers will significantly enhance existing powers and tools to tackle serious organised crime in Northern Ireland and I am keen that they should be available to the relevant enforcement agencies as soon as possible. There have been wide calls for the commencement of the powers, including from members of the Northern Ireland Assembly, particularly in relation to the new unexplained wealth order provisions, account freezing and forfeiture provisions and listed assets forfeiture provisions.

I do not want Northern Ireland to have a weaker regime than other UK jurisdictions – to be seen as a ‘safer’ place to keep criminal assets. Organised crime does not observe geographical boundaries and there is value in handling matters such as asset recovery consistently. These new and additional powers will strengthen and align regimes and further support law enforcement efforts to subvert the financial motivation of criminals.

I feel it is important to also highlight that the CFA 2017 provisions became operational in other parts of the UK between October 2017 and April 2018. I am keen to ensure that we can progress at pace and do not miss the opportunity to have them commenced in 2020. I want to avoid any further delay in ensuring that law enforcement agencies and partners here have the same capabilities and powers to recover the proceeds of crime, as their counterparts in England, Scotland and Wales.

I have updated Executive colleagues and the Justice Committee of my intentions in recent weeks, through correspondence and briefing papers. I am pleased to note that while some procedural points were raised and addressed, Ministerial colleagues have to date not raised any objections to the provisions. The Justice Committee was briefed on 28 May and I subsequently provided additional information to address a range of procedural points raised. I understand the Justice Committee has taken the views of the Northern Ireland Policing Board and that members of the Board are supportive.

I am making this written Ministerial statement to advise members of the Northern Ireland Assembly of my intentions.

Next steps

I will be writing later today to the Home Secretary to seek her agreement to commence the relevant provisions of both the CFA 2017 and the COPO Act 2019 in Northern Ireland. The Home Secretary has the primary role in terms of commencing the majority of the outstanding CFA 2017 provisions by commencement regulations at Parliament. A number of provisions will be commenced by regulations by my Department at the Northern Ireland Assembly. The Home Secretary has the sole responsibility for commencing the relevant COPO Act 2019 provisions.

The aim is to commence the provisions of CFA 2017 by December 2020. The COPO Act 2019 provisions are expected to be commenced after the UK/US data access agreement is ratified, which is likely to be in July 2020.

There is a significant programme of work required to support commencement of the CFA 2017 provisions, including the drafting of the commencement regulations and consultation prior to making of the regulations, as well as other secondary legislation to bring court rules and associated Proceeds of Crime Act 2002 codes of practice into force. Much of the preparatory work needs to be taken forward by the Home Office, with the support of officials in the Department of Justice.

Secondary legislation to amend court rules will also be required to support the commencement of the COPO Act 2019 provisions.

Future Assembly Scrutiny

Informing Ministerial Colleagues, the Justice Committee and advising members of the Northern Ireland Assembly of my intentions to proceed to commence the provisions by way of this Written Ministerial Statement, will I hope, provide a proportionate and pragmatic means of moving forward while recognising the unique circumstances of these particular Acts.

There will be an opportunity for Assembly Members to be consulted on the Proceeds of Crime Act 2002 Codes of Practice which will set out how those powers should be operationalised in Northern Ireland.

I have also asked officials to make arrangements to provide an annual update to the Justice Committee on the use of the powers in the CFA 2017.

Conclusion

The additional powers, through commencement of the CFA Act 2017, will significantly enhance existing powers and tools to tackle serious organised crime in Northern Ireland and I am keen that they should be available to the relevant enforcement agencies as soon as possible.

Commencement of the COPO Act 2019 will significantly strengthen existing procedures under Mutual Legal Assistance to enable law enforcement agencies in Northern Ireland access to information which may be critical to an investigation or prosecution.

As Justice Minister I believe that there is a compelling case to commence these provisions. I strongly believe that they are essential in the fight against crime, including serious organised crime.

The Acts can be read at the following links:

The Criminal Finances Act 2017:

<http://www.legislation.gov.uk/ukpga/2017/22>

The Crime (Overseas Production Orders) Act 2019:

<http://www.legislation.gov.uk/ukpga/2019/5/enacted>

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