Consultation on plans to extend to Northern Ireland certain provisions contained within the Air Traffic and Unmanned Aircraft Bill relating to the use of drones over custodial institutions

**1. Introduction**

1.1 The Department of Justice (DOJ) is conducting a consultation exercise on a proposal that would extend to Northern Ireland a provision contained within the Air Traffic and Unmanned Aircraft Bill relating to the use of drones over custodial institutions.

1.2 The purpose of this consultation is to seek views on this proposal. Subject to the outcome of the consultation we intend to ask the Department for Transport to extend this provision to this jurisdiction.

**2. Background**

2.1 The shutting down of Gatwick Airport in December 2018 because of drone activity and numerous incidents in and around prisons across England, Wales and Scotland where drones have been used to convey items such as controlled drugs, mobile phones, weapons and equipment to facilitate escapes have focused the Government’s attention on tackling what is recognised as a fast growing problem. Indeed incidents have been numerous and wide-ranging. Drones were detected being used illegally in and around custodial institutions for the first time in England and Wales in 2014 and the following year 33 similar drone incidents were reported. By 2016 this had increased to 293 incidents and to 319 in 2017. There has been some decrease in drone activity recently, put down in the main to an increase in low level counter measures, but Her Majesty’s Prisons and Probation Service (HMPPS) fully expect an increase again as the tactics used by criminals continue to evolve and the technical capabilities of drones improve rapidly. For example drones are already being sold that are much less reliant on the operator having a direct line of sight, they are being fitted with obstacle avoidance technology and they have increased speed and range.

2.2 Drone incidents pose a security risk to prisons and have the potential also to place the public at risk. In England and Wales particularly, drones are being used to smuggle contraband such as drugs, weapons and mobile phones as prisons get more adept at preventing contraband from coming in through visits and other more traditional methods of entry. These items place both prisoners and staff at risk, undermine hugely rehabilitation programmes and threaten the good order and security of establishments. Their importation into prisons is also often organised and funded by criminal networks that operate both within the custodial environment and in the community. Mobile phones are often the first thing to be flown in and these are then used to organise delivery of further contraband by drone. These phones are also used to direct criminal activity in the community. For example in 2015 prisoners received further sentences for orchestrating the importation of sub-machine guns into the UK, and their use of mobile phones smuggled into prison using a drone was instrumental in the facilitation of this crime.

2.3 It is also possible that drones may be used in future to facilitate an escape, again posing a direct threat to public safety and prison security. Indeed, an intelligence report from a police Regional Organised Crime Unit revealed plans to fly a metal grinder into a prison in the North West of England to facilitate an escape.

2.4 Prisons in the Republic of Ireland have also reported a rapid increase in drone activity.

**3. Proposals**

3.1 The provisions of the Bill extend to the whole of the United Kingdom and relate almost exclusively to matters reserved to the UK Parliament as the Bill falls within “civil aviation” which is a reserved category under Schedule 3 to the Northern Ireland Act 1998 (as well as reserved under Schedule 5 to the Scotland Act 1998 and Schedule 7A to the Government of Wales Act 2006). Certain new police powers in the Bill aim to tackle the unlawful use of unmanned aircraft and are ancillary to the overall unmanned aircraft regulation strategy, which, as part of civil aviation, remain in the reserved field and subject to the authority of HM Government.

3.2 However, one particular aspect of the Bill proposes an amendment to the Police Act 1997 to provide for senior Northern Ireland Prison Service (NIPS) and Youth Justice Agency (YJA) officials (rather than in our case the Chief or Deputy Chief Constable of the Police Service of Northern Ireland (PSNI)) with the power to grant authorisations to allow NIPS and YJA staff to interfere with a drone but only if the authoriser believes that it is being used in the commission of a relevant offence, the relevant offences being assisting escape from lawful custody, facilitating escape by conveying things into a custodial establishment or the conveyancing of certain unauthorised articles into a custodial establishment (as defined by the Prison (NI) Act 1953). This would save NIPS along with the Scottish Prison Service and HMPPS from making urgent, repetitive and recurring applications to senior police officers in connection with real times incidents.

3.3 The Department of Justice (NI) (DoJ) agrees with the view taken by the Department for Transport and Ministry of Justice that this provision confers a new function on the DoJ. Under the devolution settlement the Northern Ireland Assembly would therefore have been required to pass a Legislative Consent Motion to allow this particular provision to have been included in this UK-wide Bill. However, in the current absence of a functioning Executive and Assembly the DoJ has decided that the guidance issued by the Secretary of State for Northern Ireland under s3 of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018 is engaged. This guidance provides that NI Permanent Secretaries shall not be prevented from exercising departmental functions that would ordinarily require Ministerial approval where they have satisfied themselves that there is a public interest to do so. The DoJ is of the view that this public interest test has been met given the negative impact drones could have on the good order and security of custodial establishments in Northern Ireland. It is therefore minded to ask the Department for Transport to include it in its UK-wide Bill, subject to the outcome of this consultation which is also required under the Secretary of State’s guidance.

3.4 Should the Assembly and Executive return it is our intention to seek the new Justice Minister’s views on this proposal forthwith.

**Are you content that senior NIPS and YJA officials, rather than senior officers of the PSNI, would be able to authorise the interception of unmanned aircraft drones but only in circumstances where they believe that the drone in question is involved in the commission of a relevant offence, the relevant offences being assisting escape from lawful custody, facilitating escape by conveying things into a custodial establishment or the conveyancing of certain unauthorised articles into a custodial establishment (as defined by the Prison (NI) Act 1953)?**

**4. Equality considerations**

4.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the DoJ is required to have due regard to the need to promote equality of opportunity. This legislation also requires public authorities to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact; and whether such impact is justifiable. These obligations are designed to ensure that equality and good relations considerations are made central to government policy development.

4.2 The DoJ is of the view that the introduction of this proposal will have no adverse effect on any Section 75 groups and as such does not believe that an Equality Impact Assessment (EQIA) is required.

5. Duration of Consultation

5.1 The Department would welcome views on the proposals raised in this consultation paper. The consultation will run for a period of eight weeks from 10 January 2020 and **all responses should be submitted by 5pm on
6 March 2020.**

Comments are welcomed by post or e-mail to:-

Northern Ireland Prison Service

Licensing & Legislation Branch

Room 320

Dundonald House

Stormont Estate

Belfast

BT4 3SU

E-mail: NIPS.Consultations@justice-ni.x.gsi.gov.uk

When responding it would be very useful if you could confirm whether you are replying as an individual or submitting an official response on behalf of an organisation.

If responding on behalf of an organisation please include:

* Your name;
* Your position (if applicable);
* The name of your organisation;
* An address (including postcode);
* An email address.

We will consider the responses received and publish an outcome report on the Departmental website.

In line with good practice and sustainable development this document has been published electronically.

**7. Privacy, Confidentiality and Access to Consultation Responses**

7.1 For this consultation, we may publish all responses except for those where the respondent indicates that they are an individual acting in a private capacity (e.g. a member of the public). All responses from organisations and individuals responding in a professional capacity will be published. We will remove email addresses and telephone numbers from these responses; but apart from this, we will publish them in full.  For more information about what we do with personal data please see our consultation privacy notice[[1]](#footnote-1)[1].

7.2 Your response, and all other responses to this consultation, may also be disclosed on request in accordance with the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR); however all disclosures will be in line with the requirements of the Data Protection Act 2018 (DPA) and the General Data Protection Regulation (GDPR) (EU) 2016/679.

7.3 If you want the information that you provide to be treated as confidential it would be helpful if you could explain to us why you regard the information you have provided as confidential, so that this may be considered if the Department should receive a request for the information under the FOIA or EIR.

**ANNEX A**

**Privacy Notice – Consultations (DoJ)**

Data Controller Name: Department of Justice (DoJ)

Address: Castle Buildings, Stormont, BELFAST, BT4 3SG

Email: NIPS.Consultations@justice-ni.x.gsi.gov.uk

Data Protection Officer Name: DoJ Data Protection Officer

Telephone: (028) 90378617

Email: DataProtectionOfficer@justice-ni.x.gsi.gov.uk

Being transparent and providing accessible information to individuals about how we may use personal data is a key element of the [Data Protection Act (DPA)](http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) and the [EU General Data Protection Regulation](https://gdpr-info.eu/art-6-gdpr/) (GDPR). The Department of Justice (DoJ) is committed to building trust and confidence in our ability to process your personal information and protect your privacy.

**Purpose for processing**

We will process personal data provided in response to consultations for the purpose of informing the development of our policy, guidance, or other regulatory work in the subject area of the request for views. We will publish a summary of the consultation responses and, in some cases, the responses themselves but these will not contain any personal data. We will not publish the names or contact details of respondents, but will include the names of organisations responding.

If you have indicated that you would be interested in contributing to further Department work on the subject matter covered by the consultation, then we might process your contact details to get in touch with you.

**Lawful basis for processing**

The lawful basis we are relying on to process your personal data is Article 6(1) (e) of the GDPR, which allows us to process personal data when this is necessary for the performance of our public tasks in our capacity as a Government Department.

We will only process any special category personal data you provide, which reveals racial or ethnic origin, political opinions, religious belief, health or sexual life/orientation when it is necessary for reasons of substantial public interest under Article 9(2) (g) of the GDPR, in the exercise of the function of the department, and to monitor equality.

**How will your information be used and shared**

We process the information internally for the above stated purpose. We don't intend to share your personal data with any third party. Any specific requests from a third party for us to share your personal data with them will be dealt with in accordance the provisions of the data protection laws.

**How long will we keep your information?**

We will retain consultation response information until our work on the subject matter of the consultation is complete, and in line with the Department’s approved Retention and Disposal Schedule [DoJ Retention & Disposal Schedule](https://www.justice-ni.gov.uk/sites/default/files/publications/doj/retention-and-disposal-schedule-final-signed-copy.pdf).

**What are your rights?**

* You have the right to obtain confirmation that your data is being [processed, and access to your personal data](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/)
* You are entitled to have personal data [rectified if it is inaccurate or incomplete](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-rectification/)
* You have a right to have personal data [erased and to prevent processing](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-erasure/), in specific circumstances
* You have the right [to ‘block’ or suppress processing](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-restrict-processing/) of personal data, in specific circumstances
* You have the right to [data portability](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-data-portability/), in specific circumstances
* **You have the right to** [object to the processing](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-to-object/)**,** in specific circumstances
* **You have rights in relation to** [automated decision making and profiling](https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/rights-related-to-automated-decision-making-including-profiling/).

**How to complain if you are not happy with how we process your personal information**

If you wish to request access, object or raise a complaint about how we have handled your data, you can contact our Data Protection Officer using the details above.

If you are not satisfied with our response or believe we are not processing your personal data in accordance with the law, you can complain to the Information Commissioner at:

Information Commissioner’s Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

casework@ico.org.uk

1. [1] The DoJ Consultation Privacy Notice is attached at Annex A. [↑](#footnote-ref-1)