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Christine Darrah  
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Room 242  
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26 January 2021

Dear Christine

### **CRIMINAL JUSTICE (COMMITTAL REFORM) BILL**

Having considered correspondence from the Northern Ireland Human Rights Commission, the Committee has requested details of analysis completed regarding the human rights compliance of the Criminal Justice (Committal Reform) Bill. This is in regard to both the European Convention of Human Rights (ECHR) and international human rights law. This information requested is provided in Annexes A and B respectively:

- Annex A – Completed European Convention of Human Rights Assessment Proforma. This summarises the assessment of human rights implications completed by the Department of Justice and the Departmental Solicitor's Office as the Bill was developed; and
- Annex B - Note on relevant international human rights law.



2. In their letter the NIHRC reference the Explanatory Memorandum and note that only the European Convention of Human Rights (ECHR) is mentioned. This is because the legislative competence of the Assembly is defined in terms of the ECHR, as these are the only rights that affect legislative competence under section 6 of the Northern Ireland Act 1998 (“the NI Act”).

3. Under section 14(5)(a) of the NI Act, responsibility for compliance with international obligations in terms of legislative competence is vested in the Secretary of State rather than NI departments. The Secretary of State also has powers to ensure compliance with international obligations by virtue of section 26 of the NI Act. The Department has consulted with the Northern Ireland Office and they indicated that they were satisfied with the content of the Bill. A letter of consent to the Bill was received from the Secretary of State. The Explanatory Memorandum records the Secretary of State’s consent for the Bill.

4. Most of the rights that are embodied in the ECHR are also reflected in other international instruments and that, as the Bill is ECHR compliant, it is likely to satisfy those wider international commitments too. The Commission has indicated no fundamental concerns regarding the Bill, however, acknowledging the wider remit of the NIHRC an overview of elements of international human rights law and how it relates to the Bill has been prepared and can be found in Annex B. Having previously engaged with NIHRC regarding the Bill, this note focuses on elements of international human rights law specifically highlighted by the Commission.

Yours sincerely,

**DALO**



## Annex A

### Human Rights Act Assessment Proforma

This proforma will help you to articulate any human rights issues in the policy/proposal that you are working on. It is necessary for you to have read the OFMDFM guidance on human rights entitled 'Get in on the Act; a practical guide to the Human Rights Act for public authorities in Northern Ireland' before completing this proforma.

If the policy/proposal is relevant to some rights but does not interfere with or limit them, your assessment must be signed off by a Senior Responsible Officer (Grade 7, equivalent or above). If you find that it does interfere with or limit one or more of the Convention rights, and your Senior Responsible Officer agrees, you must seek legal advice, even if it is considered that the interference or limitation is justified.

This preform is available at [www.ofmdfmi.gov.uk/human-rights](http://www.ofmdfmi.gov.uk/human-rights). If you fill in the form electronically, there is no restriction as to the amount you can type in each box.

Your answers in the rest of this proforma will help you draft a clearer note to your legal advisor.

#### 1. Policy title and aims

Please state the title and objective of the policy/proposal you are working on.

**Title:**

Reform of Committal Proceedings within the Northern Ireland criminal justice system and the Criminal Justice (Committal Reform) Bill.

**Aims:**

Delay in Northern Ireland's criminal justice system has been a significant issue for some time. In 2019/20 the average median time taken to complete Crown Court cases from the time that an incident was reported to police until disposal at Crown Court was 565 days. To disaggregate the data further, Crown Court cases initiated by way of a police charge to on average 410 days, whilst for those initiated by way of a summons issued by PPS following a report from PSNI the figure was 861 days. It is also worth highlighting that approximately 20% of Crown Court cases completed during 2019/20 cases took longer than 1,055 days to complete from the date that an incident was reported to police.

Delay has a negative impact on those involved in cases, particularly victims and witnesses. Protracted proceedings also impact negatively on defendants, many of whom may be subject to bail conditions, or remanded into custody until the outcome of the case. Delay can also have a negative impact on public confidence in the system.



The policy (Committal Reform) aims to tackle avoidable delay in the Crown Court and support victims and witnesses by making changes to the committal process to allow cases involving certain offence types which are to be prosecuted on indictment in the Crown Court to bypass the traditional committal process entirely. For those Crown Court cases which are subject to a traditional committal hearing, the policy removes the option of victims and witnesses being called upon to provide oral evidence as part of the committal hearing. In effect this means that all victims and witnesses will not have to give evidence in court pre-trial.

Committal is the process whereby a magistrates' court will determine whether there is sufficient legal evidence available to transfer the case to the Crown Court for trial. The present arrangements are widely regarded as a source of delay in the criminal justice system, and a potential cause of stress for victims and witnesses who may be called upon to provide oral evidence in court more than once (at the committal hearing, and then again at any subsequent trial in the Crown Court).

The principles of committal reform are not new and there have been a number of external reports, reviews and agreements calling for reform. The proposals of the Bill will assist the Department in meeting commitments arising from a number of previous reports including the following: -

- The New Decade New Approach Deal
- Fresh Start
- The Gillen Review Report into the law and procedures in serious sexual offences in NI
- The Northern Ireland Audit Office Report - Speeding up Justice: Avoidable delay in the criminal justice system
- Reports by Criminal Justice Inspection Northern Ireland (CJINI) specifically its report in 2018 - A thematic inspection of the handling of sexual violence and abuse cases by the Criminal Justice System in Northern Ireland.

Provisions to directly commit (or transfer) an accused person from the magistrates' court to the Crown Court, in certain circumstances, have been provided for in the Justice Act (Northern Ireland) 2015 ("the 2015 Act"). These provisions, however, have not been commenced.

After considering the findings of the relevant reports and agreements, the Department considers that the Criminal Justice (Committal Reform) Bill is required to meet its commitments arising from those reports and agreements. The present Bill therefore seeks to make a number of amendments to the 2015 Act which provides the present legislative basis for reforming committal proceedings. The Bill seeks to;

- a) amend Part 2 of Chapter 2 of the 2015 Act to expand the use of direct committal to a wider range of offences - to all offences that, as an adult, are triable only on indictment. This will bring more offences, more quickly to the Crown Court.



- b) remove the need for oral evidence at the committal hearing - Executive commitment A10, given in response to the Fresh Start Panel report; and,
- c) smooth the operational out workings of direct committal, including:
  - repeal of section 10 of the 2015 Act (process for the direct committal of those indicating an intention to plead guilty) due to operational complexities and risks;
  - removing the option for oral evidence to be called in the Application to Dismiss process - for consistency; and
  - the introduction of new powers for the Director of Public Prosecution to discontinue proceedings between committal and arraignment.

The Bill is designed to help tackle some of the key challenges faced by our criminal justice system. It will help tackle delay in the most serious cases which are heard in the Crown Court and will improve the experience of victims and witnesses on their journey through the criminal justice system.

## 2. Rights which the policy/proposal engage

Go through each of the rights detailed in the table below. For each one consider whether the policy/proposal engages the right, i.e. how the policy/proposal you are working on could involve the right. Explain how the right is engaged.

*Please note that the rights have been abbreviation so you should see the relevant Article in the Guide to above for the full tittle and explanation of the right.*

Right	Yes/No	Explanation
Article 2 Right to life	Yes	<p>The Department considers that the right is engaged but that it is not interfered with or limited.</p> <p>The policy is relevant in so far as it relates to the prosecution of a number of criminal offences relevant to upholding the state's responsibilities to protect right to life. The offences include murder, manslaughter and other offences which involve the death of a victim. Due to the serious nature of these offence types, they are generally only triable on indictment in the Crown Court.</p> <p>The Department considers that there may be a positive impact as the Bill is intended to reduce delay and these</p>
		cases should be transferred more quickly to the Crown Court.



Article 3 of Prohibition of torture, inhuman and degrading treatment	Yes	<p>The Department considers that the right is engaged but that it is not interfered with or limited.</p> <p>In the most direct sense, Department considers that the right is engaged to the extent that it impacts on the offence of torture by a public official provided for by the Criminal Justice Act 1988 (s.134).</p> <p>Article 3 is however broad in nature, and the Department considers that torture, inhuman and degrading treatment may be engaged by other offences. Direct committal will apply to any offence which, in the case of an adult, can be prosecuted only on indictment. Many of these offences may involve a victim suffering from physical or psychological harm and, it may therefore be possible, in some cases, that Article 3 is engaged.</p> <p>The Department considers that there may be a positive impact as the Bill is intended to reduce delay and these cases should be transferred more quickly to the Crown Court.</p>
Article 4 of Prohibition of slavery and forced labour	Yes	<p>The Department considers that the right is engaged but that it is not interfered with or limited.</p> <p>The Department considers that the right may be engaged to the extent that offences relating to the prohibition of slavery and forced labour will be included.</p> <p>The Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 created a number of offences relating to slavery and forced or compulsory labour which are triable only on indictment, and will therefore qualify for the direct committal process provided for in the Justice Act (NI) 2015, as amended by the Criminal Justice (Committal Reform) Bill.</p>
Article 5 Right to liberty	Yes	<p>The Department considers that the right is engaged but that it is not interfered with or limited.</p> <p>Article 5(3) states that everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this</p>



		<p>Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. One of the main aims of the proposed changes is to reduce delay in criminal court proceedings. Whilst this will benefit all victims, witnesses and defendants. In particular the anticipated reduction of delay may have a positive impact on those defendants who are remanded in custody awaiting trial or those with strict bail conditions.</p> <p>Also, the new discontinuance provisions give prosecutors the power to discontinue proceedings without the need to obtain the leave of the court. Discontinuance therefore avoids the need for a court hearing and the unnecessary attendance of the parties. It enables a defendant in custody to be released immediately without the need to wait until the next hearing which is an additional safeguard in relation to the rights of the accused under Article 5 of the Convention (right to liberty and security). The Department propose that PPS guidance will be given regarding reasons for discontinuance.</p>
Article 6 Right to a fair trial	Yes	<p>The Department considers that the right is engaged but that it is not interfered with or limited.</p> <p>Article 6(1) of the Convention provides that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Tackling delay in the criminal justice system has been a Departmental priority since the devolution of justice powers in 2010. Delay is one of the biggest challenges facing Northern Ireland's criminal justice system. A report by the Northern Ireland Audit Office in 2018 found that-</p> <p>'The time taken to complete cases is one of the most important aspects of the experience of those who use the justice system. Timeliness is a key issue in Northern Ireland. Crown Court cases here typically take twice as long to resolve as they do in England and Wales, and there is no evidence of a trend of improvement.'</p>





		<p>One of the main aims of the Bill is to speed up the criminal justice process which is consistent with Article 6 and the need for a fair trial within a 'reasonable' time.</p> <p>Article 6(3)(a) of the Convention provides that an accused person has the right to know the case against him. This obligation is met through the extensive disclosure provisions in the Criminal Procedure and Investigations Act 1996 which require that disclosure should be made of all material held by the prosecution that weakens its case or strengthens that of the defence. Fair disclosure is an important part of a fair trial.</p> <p>The accused has the right to test the case against him at his trial. Article 6(3)(d) guarantees the right of the accused to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf on the same conditions as witnesses against him.</p> <p>The Department is satisfied that the totality of the proceedings safeguard the right to a fair trial in that the rights of an accused to know the case against him, and to call and cross-examine witnesses, are secured at the trial stage of the criminal proceedings</p>
Article 7 No punishment without law	No	Although the Bill makes substantive changes to criminal law these changes do not involve creating or altering criminal offences.
Article 8 Right to respect for private and family life	Yes	<p>The policy is relevant in so far as it relates to the prosecution of a number of criminal offences that may be relevant to this right.</p> <p>The Department considers that the right is engaged but that it is not interfered with or limited.</p>
Article 9 Freedom of thought conscience and religion	Yes	<p>The policy is relevant in so far as it relates to the prosecution of a number of criminal offences that may be relevant to this right.</p> <p>The Department considers that the right is engaged but that it is not interfered with or limited.</p>





Article 10 Freedom of expression	Yes	<p>The policy is relevant in so far as it relates to the prosecution of a number of criminal offences that may be relevant to this right.</p> <p>The Department considers that the right is engaged but that it is not interfered with or limited.</p>
Article 11 Freedom of assembly and association	Yes	<p>The policy is relevant in so far as it relates to the prosecution of a number of criminal offences that may be relevant to this right.</p> <p>The Department considers that the right is engaged but that it is not interfered with or limited.</p>
Article 12 Right to marry and found a family	Yes	<p>The policy is relevant in so far as it relates to the prosecution of a number of criminal offences that may be relevant to this right.</p> <p>The Department considers that the right is engaged but that it is not interfered with or limited.</p>
Article 14 Prohibition of discrimination	Yes	<p>The Department considers that the right is engaged but that it is not interfered with or limited.</p> <p>The policy engages Article 14 however the department considers that the policy does not interfere with or limit this right.</p> <p>In fact the Department considers that the policy may have a positive impact in that proposed changes within the Bill will provide a further safeguard for defendants with issues of capacity as defendants will no longer have to consent to the manner in which the committal hearing is to be heard.</p> <p>In addition direct committal may have a positive impact as cases may move swiftly to the Crown Court the appropriate venue for issues of capacity to be addressed.</p> <p>The Department also looked at towards section 75 to ensure that proposed changes did not disadvantage any particular groups. The provisions are equally applicable to all groups and will make for a simpler process to benefit all groups.</p>



Protocol 1, Article 1 Right to property	No	The Department does not consider that the policy engages Article 1 of Protocol 1.
Protocol 1, Article 2 to Right education	No	The Department does not consider that the policy engages Article 2 of Protocol 1.
Protocol 1, Article 3 Right to free elections	Yes	The Department considers that the policy engages Article 3 Protocol 1, only insofar as the criminal law in Northern Ireland provides a number of criminal offences linked to electoral law. There are a number of relevant offences which are triable either in the magistrates' court or the Crown Court.  The Department considers that the right is engaged but that it is not interfered with or limited.

If you have answered yes to any of these questions you must complete the rest of the proforma. If you have answered no to all of the questions, you may proceed to Question 9.

### **3. Rights with the policy/proposal interferes with or limits**

Will the policy/proposal interfere with or limit about of the rights you identified as being engaged? If so, explain how the right is interfered with or limited.

*You should note that interference could be a negative impact on a right or a failure to take positive action where this is required under the Article in question. For further guidance on which Articles require positive action, please consult the Guide.*

Article	Interfered with or limited? Yes/No	What is the interference/limitation?
The Department considers that Articles 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 14 and Article 3 Protocol 1 are engaged however they are not interfered with or limited.	No	

### **4. Those affected by the interference/limitation**

Identify who could be affected by the interference or limitation, e.g. sections of society or people with certain beliefs or opinions, and explain how they could be affected.



*It will help on identifying interference or limitations to think about all the people who could be affected and be seen as a victim within the Human Rights Act.*

Who could be affected?	How could they be affected?
Not applicable	

### 5. Legal basis for interference/limitation

Is there a law which allows you to interfere with or limit the rights identified in Question 4?

Any interference with or limitation on a Convention right must have a legal basis. You therefore need to establish whether there is a law which allows this proposed interference or limitation.

*You may need legal advice to clarify this.*

Relevant legislation:

Not Applicable

Alternatively, the policy/proposal may involve the creation of a new law which allows for the interference or limitation. If this is the case, please detail and explain in the box below:

Not Applicable

### 6. Purpose of the police/proposal

Even if the interference is limitation in the policy/proposal is according to the law, there are further conditions which must be met. The purpose of the policy/proposal must pursue a legitimate aim or fall under one of the specific exceptions in the Article in question.

Consider each of the Articles which the policy/proposal will interfere with or limit, and for each one specify the exception or legitimate aim which allows the interference or limitation and explain why.

*If you are unsure of the exceptions or legitimate aims which are applicable for the rights interfered with or limited by the policy/proposal you are working on, you should refer to the text of the Convention and the Guide.*

Article	Exception/Limitation	Explanation
Not Applicable		

### 7. Necessary in a democratic society



Articles 8, 9, 10 and 11 specify that interferences or limitations must be necessary in a democratic society. If the policy/proposal interferes with or limits one of these rights, detail in the table below how the right is necessary in a democratic society i.e. does it fulfil a pressing social need?

*You may need to speak to the Senior Responsible Officer for Clarification of this.*

Article affected	Explain why it is necessary in a democratic society
Not Applicable	

### 8. Proportionality

Any interference with or limitation on a Convention right must be proportionate, i.e. the policy/proposal must interfere with or limit a right no more than is absolutely necessary to achieve its aims. For each Article which the policy/proposal interferes with or limits, explain for the interference or limitation is proportionate.

For further information on proportionality please consult the Guide.

Article affected	Explain why the interference/limitation is proportionate
Not Applicable	

### 9. Article 14 equality issues

Even if it does not interfere with or limit a right or freedom, could the policy/proposal result in people being treated differently in relation to any of the Convention rights? Article 14 does not allow discrimination on the exercise of any of the Convention rights.

*For further information on Article 14, please refer to the relevant pages in the Guide.*

Convention Article affected	How are people treated differently?	Is this justifiable?
Not Applicable		

You should now have a clearer view about the policy/proposal and the possibility of it engaging or interfering with Convention rights and freedoms.

Please ensure the proforma is also signed by your Senior Responsible Officer and if there is any possible interference or limitation refer to you legal advisor for further action and advice.

Please tick the statement that applies, and sign below.

- a) The policy/proposal does not engage any Convention rights.
- b) The policy/proposal does engage one or more of the Convention rights, but does not interfere with or limit it/them.

c) The policy/proposal interferes with or limits one or more Convention rights and legal advice is being sought.



Department of  
**Justice**

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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## **Overview of relevant international human rights law**

The Department has considered in depth how the policy and the Criminal Justice (Committal Reform) Bill complies with the European Convention of Human Rights as Convention rights are the only rights that affect legislative competence under section 6 of the Northern Ireland Act 1998. The Northern Ireland Human Rights Commission have stated that they have no fundamental concerns on the face of the Bill, however, the Department has also considered the standards and obligations listed below, which were identified by the Northern Ireland Human Rights Commission as being potentially relevant to the provisions in the current Bill.

- Council of Europe, Convention on preventing and combating violence against women and domestic violence, 2011
- Council of Europe, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985;
- Council of Europe, Committee of Ministers, Recommendation No. R (97) 13 Concerning Intimidation of Witnesses and the Rights of the Defence, 1997;
- Council of Europe, Committee of Ministers, Recommendation No. R(2002)5 on the Protection of Women against Violence;
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2006;
- Recommendation Rec(2005)9 of the Committee of Ministers to member states on the protection of witnesses and collaborators of justice, 2005;
- Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to member states on assistance to crime victims, 2006;
- Council of Europe, Parliamentary Assembly Resolution 1697 (2009) on Migrant women: at particular risk from domestic violence.
- Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.

2. The main focus of the list of standards and obligations provided by the NIHRC centres on the experience of victims and witnesses and whilst each standard and obligation was briefly reviewed separately, overall the Department contends that the proposals put forward should have a positive impact on these standards and obligations due to two main points.

3. Delay is one of the biggest challenges facing the criminal justice system. It can have a negative impact on victims and witnesses, and also defendants. Delay can also harm public confidence in the system leading, in some instances, to a lack of engagement. The Criminal Justice (Committal Reform) Bill seeks to tackle elements of avoidable delay in the Crown Court by allowing certain offences which, in the case of an adult, are triable only on indictment to be directly committed to the Crown Court, without first needing to go through the traditional committal process which is regarded by many as a source of delay. The Department considers that the proposals contained within the Bill seek to tackle avoidable delay in the Crown Court where the most serious criminal cases are heard.

4. In order to also address stress caused to victims and witnesses of having to provide oral evidence pre-trial, the Bill will also seek to remove the option to call victims and witnesses to provide oral evidence as part of the committal hearing. This is relevant for cases to be prosecuted on indictment in the Crown Court which are not subject, as yet, to direct committal.

5. Most of the rights that are embodied in the ECHR are also reflected in other international instruments and the Department considers that, as the Bill is ECHR compliant, it is likely to satisfy those wider international commitments too. However, ultimately compliance with wider international law is, in accordance with the Northern Ireland Act 1998, a matter for the Secretary of State for Northern Ireland.