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FROM: DALO
DATE: 19 MARCH 2021
TO: CHRISTINE DARRAH

CRIMINAL JUSTICE (COMMITTAL REFORM) BILL

SUMMARY

Business Area: Justice Performance Team, Access to Justice Directorate

Issue: Response to the key issues raised and comments made in the written and oral evidence received by the Committee on the Criminal Justice (Committal Reform) Bill.

Restrictions: Official – policy in development.

Action Required: The Committee is invited to note the Department's response to the key issues raised and comments made in the written and oral evidence received by the Committee on the Criminal Justice (Committal Reform) Bill, following the Committee's note to the Department on 3 March 2021.
As requested, officials will attend the Committee on 25 March to answer any questions or points of clarification.

FROM THE OFFICE OF THE JUSTICE
MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Mánnystrie O tha Laa

www.justice-ni.gov.uk

Please see attachment for detailed response.

DALO

SUMMARY OF EVIDENCE RECEIVED BY THE JUSTICE COMMITTEE ON THE CRIMINAL JUSTICE (COMMITTAL REFORM) BILL

GENERAL COMMENTS		
Organisation	General Views/Comments/Issues relating to the Bill	Department of Justice response to general Views/Comments/Issues relating to the Bill
1. Bar of NI	<p>Questions the basis on which the Department has concluded that “extending the roll out of direct committal to offences triable only on indictment provided the best basis for tackling delay in the Crown Court” given analysis of legislative changes in other jurisdictions such as England and Wales have shown that reforms to the committal process alone have not reduced delays but instead shifted them to the higher court, which then struggles to absorb the increase.</p> <p>Has not seen any evidence or figures to support the view that direct committal will improve efficiency in the justice system and believes these should be provided by the Department.</p>	<p>Speeding up justice is one of the biggest challenges facing the criminal justice system and is a priority for the Department of Justice, its criminal justice partners and the Criminal Justice Board. The speed that cases progress matters to victims and witnesses, their families and their communities and can help offenders to better understand the implications of their actions and create a better opportunity for rehabilitation. However, reducing the time it takes to complete criminal cases is a challenging and complex issue and reforms take time to embed and for their impact to be seen.</p> <p>The Department works closely with criminal justice partners to deliver a Speeding up Justice programme with a number of strands including:</p> <ul style="list-style-type: none"> • performance reporting; • research and analysis; • working in partnership; • legislation; and • improvement projects.

		<p>Committal reform is just one part of this programme of work and the Department recognises that there are many elements to reducing delay.</p> <p>Importantly, in addition to helping reduce delay, the Bill also seeks to remove oral evidence in the committal process, for those cases that will not yet be directly committed - delivering an Executive commitment flowing from the Fresh Start Agreement.</p> <p>The experience of giving sometimes traumatic oral evidence, particularly under cross-examination, at both the committal hearing and then again at the Crown Court trial can have a significant impact on victims and witnesses.</p> <p>To coordinate the implementation of the committal reform the Department has established a multiagency Committal Reform Programme.</p> <p>This has representatives from relevant criminal justice organisations and has four projects:</p> <ul style="list-style-type: none">• Project 1: Legislation – responsible for delivering agreed high level business processes, the Committal Reform Bill, Court Rules and Crown Court Handling arrangements• Project 2: Legal Aid – responsible for delivering revised legal aid Rules.• Project 3: IT – responsible for delivering technical changes and testing.
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		<ul style="list-style-type: none"> • Project 4: Business Change – responsible for delivering new business and operational processes, funding and resources, engagement and communication, training and benefits realisation. <p>The Department is also creating a Stakeholder Forum to include representatives from the Bar Council of NI, Law Society NI and Victims groups.</p> <p>In 2019, 1,765 defendants went through the traditional committal process in the magistrates’ court. The vast majority proceeded by PE (preliminary inquiry) [1,656 (94%)] and the remaining 109 (6%) proceeded with oral evidence – either a PI (preliminary investigation) or mixed committal.</p> <p>Following a committal hearing, only 75 defendants (4%) did not proceed to Crown Court. This serves to highlight the limited impact of the committal hearing as a filtering mechanism.</p> <p>To process these cases through the committal process took approximately 4,185 hearings in the magistrates’ court. This does not include hearings in relation to bail or the preparation involved in organising such hearings. Direct committal will therefore reduce the number of hearings in the magistrates’ court. Instead, cases will go straight to the Crown Court where preparation for trial begins.</p> <p>The length of time spent in magistrates’ court varies greatly from case to case and will depend on a number of factors</p>
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		<p>such as case complexity or whether the case is by brought by way of summons or charge.</p> <p>Cases brought by way of summons tend to spend little time in the magistrates' court and direct committal will make some but limited improvement to these cases. Charge cases however spend lengthy periods of time within the magistrates' court (approximately 250 days based on data for 2019-20). Charge cases will therefore see the most benefit. Direct committal will see these cases transferred to the Crown Court at an earlier stage.</p>
	<p>Removal of committal processes may not have the impact hoped for given that other issues causing delay across the system still remain to be addressed including ensuring that greater resources are directed towards more efficient and effective investigation and disclosure process which are often the key drivers of delay in the Crown Court. There remains a pressing need to develop a more robust method for sharing digital evidence as soon as possible.</p>	<p>Direct committal represents a significant change in the way that the criminal justice system for Crown Court cases will operate.</p> <p>At present cases are investigated and files largely completed before a decision is taken as to whether to prosecute. At that point a committal hearing is organised at which the magistrates' court will determine whether there is a prima facie case to answer (i.e. whether there is sufficient evidence to justify sending the case to Crown Court for trial). The purpose of the committal hearing is not to determine whether or not the accused is guilty as this can only be established at trial / in the Crown Court.</p>
	<p>The Bar recommends that the Committee should seek assurances that if the Bill is passed in its current format, adequate resources will be provided to the Crown Court to ensure it can accommodate the likely increase in cases to avoid the difficulties seen in England and Wales.</p>	<p>Direct committal will see relevant cases transferred to the Crown Court at a much earlier stage. Some cases may still be at a relatively early stage of the investigation when transferred.</p>

		<p>Whilst further work is planned as part of the Committal Reform Programme to determine the detailed processes required to support direct committal and the impact on relevant organisations, the Department envisages that counsel will be engaged, and the relevant cases will be brought under the supervision of a Crown Court judge - in many cases this will be the trial judge - at an earlier point in the criminal justice process. This will facilitate earlier engagement to identify the key issues in a case. Where investigations remain ongoing this will allow investigators to focus on the areas in contention rather than gathering excessive evidence to prove the elements of the case which are not in dispute. This may help reduce quantities of exhibits submitted for forensic analysis thus allowing resources to be targeted more effectively.</p>
	<p>Real delays are caused at investigatory stage. Direct transfer could, in some circumstances, speed matters up but overall the Bar believes that would have a nominal impact on the significant delays in the system.</p>	<p>Some of these concepts have been demonstrated through the Indictable Cases Process (ICP) which rolled out in 2017. At its core ICP focuses on early engagement between police and prosecutors, and the prosecution and defence, with a view to building case files more proportionately. One effect of transferring cases to the Crown Court at an earlier stage will be that such engagement becomes an essential, mandatory approach to progressing Crown Court cases.</p> <p>In the Department's view this new approach will therefore introduce efficiencies within the system.</p> <p>As noted above, the main aim of direct committal is to transfer cases to the Crown Court more quickly than at present, and therefore shorten the overall length of time it takes to complete these cases. It is intended that there will be a rebalancing of resources, with less work done in the lower court tier</p>

		<p>(magistrates' court) but more work done in the higher court tier (Crown Court). A business case that is being prepared will capture the relative rebalancing of costs and resources between criminal justice organisations. There are a number of stages to the completion of the business case. The final Bill will provide a firm foundation for criminal justice organisations to develop and agree business processes and associated Crown Court rules. This will allow resource implications for relevant criminal justice organisations to be modelled and revised legal aid rules to be developed. These will form part of the final business case that will require approval before the new measures are introduced.</p> <p>The Department is leading a Project to deliver improvements in digital evidence sharing. Further information is provided at Annex 1.</p>
	<p>Robust case management and proactive early engagement between all parties are vital to reducing delays.</p>	<p>The Department agrees with this point. ICP has demonstrated that early engagement between the prosecution and defence can highlight areas of a case which are in dispute and reduce delay.</p>
	<p>There must be a shared vision across the criminal justice institutions including PSNI, PPS, NICTS and DoJ alongside the Judiciary and legal profession to ensure greater collaborative and integrated working to address the other areas causing delays</p>	<p>It is often the case that the first time the defence will have sight of the evidence in a case is when the file is issued to the accused, which generally occurs shortly prior to committal proceedings in the present system. Moving cases to the Crown Court, under the supervision of the trial judge, at an earlier stage will encourage earlier sharing of evidence.</p> <p>As noted above, the Department is also creating a Stakeholder Forum to include representatives from the Bar Council of NI, Law Society NI and Victims groups. This will ensure that issues</p>

		such as those raised by the Bar of NI can be considered as part of roll out plans.
	Highlights the significant delays in defence receiving body cam footage, CCTV and 999 calls and indicated the need for greater resources to be directed towards a more efficient and effective investigation and disclosure process. Very late or even non-disclosure is often a key driver of unnecessary delay in cases at the Crown Court.	<p>The Department accepts that disclosure issues can often cause unnecessary delay. The 'Disclosure Forum', jointly chaired by the Public Prosecution Service and the Police Service of NI, is delivering improvements in this area.</p> <p>Other aspects of work being taken forward through the Speeding Up Justice programme will also help to aid timely disclosure, for example the Indictable Cases Process, with principles of early engagement and proportionate file building.</p> <p>The DoJ led Digital Evidence Sharing Project is also delivering improvements in this area. Further information is provided at Annex 1.</p>
	Has noted the Law Society's suggestion regarding the implementation of custody time limits and statutory time limits which might be of benefit of reducing or managing delay.	See below (issues raised by Law Society NI) in relation to custody time limits and statutory time limits.
	Does not believe that the current proposals in the Bill will have the desired effects as outlined by the Department including reducing delay.	Committal reform is just one part of this programme of work and the Department recognises that there are many elements to reducing delay.
2. Law Society NI	Highlights that in 2019 the average time between committal and the commencement	Committal proceedings for indictable only offences in England and Wales were abolished in 2003. Committal proceedings

	of the trial was 118 days which was a reduction from previous years – in 2015 and 2016 the average was 168 days.	were abolished for remaining offences (hybrid or ‘either way’ offences) in 2013. An accused appearing before the magistrates’ courts in England and Wales charged with an indictable only offence is ‘sent forthwith to the Crown Court for trial for the offence’ (unless certain other conditions are met such as a notice of transfer has been issued due to the case involving serious or complex fraud, or if the case involves children).
	Considers that a significant difference between NI and England & Wales is that the decision-making District Judge in a PI is a legally qualified Judge which results in the case receiving proper and full legal scrutiny. The process for a lawyer considering such evidence is much quicker than a lay DJ which is the case in England & Wales.	Section 51 of the Crime and Disorder Act 1998 provides that in England and Wales there are no committal proceedings for indictable only offences (subject to the provisions of that Act). In 2016 the National Audit Office reported on the efficiency in the criminal justice system in England and Wales. In that report they commented on the complete abolition of the committal processing which took place in 2013. In the report they stated that ‘the abolition of committal hearings has reduced waste in the system by getting rid of a hearing that added little value’.
	Is aware that committal can be regarded as a ‘hearing within a hearing’ which creates unnecessary delay. States that 95.5% of cases in 2019 went on trial without a committal or PI taking place and therefore the suggested delay by committals to the criminal justice system may not be as significant as first appears.	All cases involving offences that are to be tried in the Crown Court currently have a committal hearing. As noted above, during 2019, 1,765 defendants were involved in a committal proceeding. The majority of these proceeded by way of a Preliminary Investigation (94%), took a median of two days to complete and spent approximately 31 days in the magistrates’ court before being committed to the Crown Court. Of the remaining cases, 4% went by way of a Preliminary Investigation and 2% went by way of mixed committal, taking on average 6 and 7 hearings respectively and spending on
	Outlines that post implementation data shows that reforms in England & Wales introducing direct transfer have not been	

	<p>shown to be demonstrably more efficient in terms of impact on court delays than first having the Crown's case tested for its sufficiency in the lower court either orally or by way of hand-up brief/written statements and it has not resulted in 'speedy justice' as expected.</p>	<p>average 110 days in the magistrates' Court before being transferred to the Crown Court.</p>
	<p>Highlights that the Republic of Ireland are debating the introduction of legislation which would provide for preliminary trial hearings similar to a committal hearing and aim to reduce delays, increase efficiency and fairness in the criminal trial process. The Irish Government has also suggested that the proposed change would benefit victims and witnesses by reducing delays and deciding which evidence is admissible before the main trial.</p>	<p>The Department notes reference made to the Criminal Procedure Bill 2021 ("the Bill") which is currently before Dáil Éireann. The stated principal purpose of the Bill is to provide for the introduction of "preliminary trial hearings". The preliminary trial hearing defined in the Bill is heard in the court before which the accused is to stand trial "the trial court". The primary purpose of the hearing is to deal with certain matters ahead of the beginning of the trial so as to ensure that the parties are ready to proceed on the day of the trial, and to minimise interruptions to unitary nature of the trial while it is in train.</p> <p>The purpose of the "preliminary trial hearing" is therefore very different to the purpose of a traditional committal hearing in Northern Ireland which is to make a decision regarding whether there is or is not sufficient evidence in order to send the accused for trial in the Crown Court.</p> <p>The Department is currently developing amendments to magistrates' courts rules and Crown Court rules to facilitate the changes introduced in the Criminal Justice (Committal Reform) Bill 2021. As part of this process, the Department is considering how rules/regulations could assist to minimise</p>

		interruptions and to ensure parties are ready to proceed on the day of the trial.
	States that solicitors suggest the main cause of delay in criminal trials is not the committal proceedings but the time taken by investigatory agencies to gather evidence to support a prosecution. The resources are not adequate with delays of up to 18 months for the outcome of computer/laptop investigations and several months to receive bodycam recordings. The problems will continue to persist unless additional focus and resources are applied and a direct transfer of proceedings will not eliminate these.	See above in relation to disclosure and early engagement. Statistics are not currently available. However, the Department is currently scoping a project to look at the both the timeliness and requirements of information requests between PPS and PSNI.
	Requests sight of statistics on delays due to the prosecution service awaiting material to complete their file.	
	Would support more resources at investigatory stage and strict time limits being imposed by a supervisory judge.	
	Believes that more collaborative work between prosecution and defence at an early stage would be of benefit. Currently, there is little engagement until later in the process. This does not require legislation but simply changes in policy and/or processes.	

	<p>Believes that, in the absence of a Bail Act in NI, it is vital that custody time limits are included in the proposed reforms, particularly given the examples from solicitors of the delays in the system of more than 18 months experienced waiting for a committal hearing date as the prosecution file is being completed. Provisions must be made for bail applications in such instances and be embodied in the proposed reforms.</p>	<p>The Department previously consulted on how a meaningful statutory time limits (STL) scheme might be introduced in 2013 and 2015. The consultation responses highlighted a need to bring forward primary legislation to allow for a meaningful starting point for an STL to be introduced.</p> <p>In order to inform thinking around STLs, and the performance of the criminal justice system more widely, the Department has developed data to measure the end to end processing times of criminal cases, from the point that an incident is reported to police until the case is disposed of in court. This end to end performance data has provided a fresh insight into the issue of delay, and it has been used to identify and resolve problem areas within the system. This data is published annually by the Department, and is a key measure of justice system performance.</p>
	<p>Believes that the abolition of committals without the introduction of custody time limits will inevitably lead to defendants suffering unjustified deprivation of liberty, as cases could foreseeably sit in the Magistrates' Court for up to 2 years before a direct transfer.</p>	<p>Statutory and Custody Time Limits are a separate, longer term strand of work within the Speeding Up Justice programme.</p>
	<p>Custody time limits would focus the mind of the prosecution. A guilty person would not simply go free as bail conditions may be imposed. But it would prevent someone who is ultimately acquitted from spending a long time in custody.</p>	<p>It is our understanding that statutory time limits, whilst piloted in England and Wales, have not been rolled out due to the added bureaucracy they create and the necessity for extensions rendering the time limits redundant.</p> <p>This was a view also expressed regarding limits set in Scotland.</p>
	<p>Regulations could be made under existing legislation (Articles 12-16 of the Criminal Justice (NI) Order 2003) for time limits at the prosecution stages and remands at pre-trial stages.</p>	<p>The process of direct committal will ensure that following first appearance in the magistrates' court the case will be transferred to the Crown Court where it can be appropriately case managed. The Department does not envisage any</p>

	<p>To date such Regulations have not yet been made although the Minister of Justice in 2012 had suggested a commitment to introduce statutory time limits initially in youth courts. The reasons why such regulations have not yet been made should be answered by the Department of Justice.</p>	<p>situation where an individual would, under new arrangements, be delayed in the magistrates' court.</p> <p>However, it should be noted that within the magistrates' court there are obligations in statute that mean that a case has to be reviewed every 28 days regarding bail and remand conditions.</p> <p>There is no statute within the Crown Court however cases are reviewed when there is a change in circumstances.</p>
	<p>The Law Society draws attention to the statutory time limits in place in Scotland to prevent delays in trials and the consequences of non-compliance and those in place in England & Wales since 1991. An evaluation of the E&W process in 2003 suggested that the time limits had speeded up the process and also complied with the standards set in the European Convention on Human Rights. Also highlights that in the Republic of Ireland summary offences are subject to 6-month limitations but there are no such time limits for indictable offences.</p>	
	<p>States that time limits for custody as well as overall time limits must be introduced at the earliest opportunity if reforms are to be of value.</p>	
	<p>The Society also suggests that the proposed reforms must also provide for focused, reasonable and achievable case management time limits to be applicable to all direct transfer cases. If this is not</p>	

	provided for then inevitable delays will be experienced by victims, witnesses and the accused.	
3. Belfast City Council	Welcomes the proposals to reform the committal process to speed up the justice system and to improve the experience of victims and witnesses.	The Department welcomes this response from Belfast City Council and its support for committal reform.
4. Committee for Agriculture, Environment and Rural Affairs	Welcomes that the Department of Justice has carried out a Rural Needs Impact Assessment which anticipates positive impact of reforms for both victims and witnesses and defendants and suggests that the Committee may wish, if appropriate, to check the veracity of these with witnesses.	The Department welcomes this response from the Committee for Agriculture, Environment and Rural Affairs and its support for committal reform. The Rural Needs Impact Assessment is provided at Annex 2 for reference.
5. Minister of Finance	<p>Notes that the EFM advises there will be a rebalancing of resources and that a business case is being prepared to capture relevant costs for criminal justice organisations which will be factored into prioritised plans for future budget periods. The final position on financial impact, affordability and financial risk is therefore potentially not fully documented at this time.</p> <p>While the intention of the legislation is clearly to produce a desirable outcome suggests that the Committee should seek to be updated on the business case and</p>	<p>As noted above, the main aim of direct committal is to transfer cases to the Crown Court more quickly than at present, and therefore shorted the overall length of time it takes to complete these cases. It is intended that there will be a rebalancing of resources, with less work done in the lower court tier (magistrates' court) but more work done in the higher court tier.</p> <p>A business case that is being prepared will capture the relative rebalancing of costs and resources between criminal justice organisations. There are a number of stages to the completion of the business case. The final Bill will provide a firm foundation for criminal justice organisations to develop and agree business processes and associated Crown Court rules. This will allow resource implications for relevant criminal</p>

	<p>consider issues such as value for money (as opposed to cost), affordability, risk and project management arrangements when considering the Bill, particularly in respect of any amendments, until the Department has completed this process.</p>	<p>justice organisations to be modelled and revised legal aid rules to be developed. These will form part of the final business case that will require approval before the new measures are introduced.</p> <p>In relation to project management arrangements, to coordinate the implementation of the committal reform the Department has established a multiagency Committal Reform Programme.</p> <p>This has representatives from relevant criminal justice organisations and has four projects:</p> <ul style="list-style-type: none"> • Project 1: Legislation – responsible for delivering agreed high level business processes, the Committal Reform Bill, Court Rules and Crown Court Handling arrangements • Project 2: Legal Aid – responsible for delivering revised legal aid Rules. • Project 3: IT – responsible for delivering technical changes and testing. • Project 4: Business Change – responsible for delivering new business and operational processes, funding and resources, engagement and communication, training and benefits realisation.
<p>6. NIHRC</p>	<p>Recognises that the proposed reform to the committal process is intended to speed up the process in Crown Court trials.</p>	<p>The Department welcomes this response from the Northern Ireland Human Rights Commission. For completeness, the Department's correspondence dated 26 January 2021 is attached at Annex 2.</p>

	<p>Notes that the EFM does not disclose any analysis of ECHR or international human rights law and suggests this analysis should be disclosed to the Committee – the Department has provided this separately in correspondence dated 26 January 2021.</p>	
<p>7.NSPCC</p>	<p>Criminal justice inefficiency is one of the NSPCC’s gravest concerns. The progress of cases involving child victims and witnesses through the system is punctuated by practices and processes that are not efficient and against the timely delivery of justice. The greatest delay of all is in serious sexual offences involving children where in 2017/18 cases took an average of 986 days to complete compared to 598 in 2014/15.</p> <p>Advises that, while supporting the Bill, additional measures and resources are needed to expedite cases involving children, both to improve their experience and renew public confidence in the delivery of justice.</p> <p>Points out that reforms to the committal process elsewhere have not significantly reduced delays but rather shifted them. States that it is vital there is no bottleneck in the system and that this Bill ensures that court procedures are much more efficient than is currently the case.</p>	<p>The Department welcomes this response by the NSPCC.</p> <p>An updated Equality Impact Assessment is included at Annex 2. The assessment requires that we review the changes proposed by any new policy direction to assess if there is any impact on section 75 groups. The findings of this review are that there are no negative impacts arising from the changes proposed in relation to committal reform.</p> <p>References in relation to the impact of delay on youth defendants highlight the need for the ongoing work across criminal justice organisations to tackle avoidable delay.</p>

	<p>Asks that the Committee seeks assurances that this legislation will not shift delay to another part of the system.</p> <p>NSPCC notes that the EFM states that the equality screening exercise undertaken by the Department highlights that delay can have a greater negative impact for youth defendants but this finding is not contained in the Department's Equality Screening Form of the Reform of Committal Proceedings which states that no potential adverse impacts have been identified on any of the Section 75 protected groups. The Department has not provided any information on the mitigations that it intends to introduce to reduce the impact of this on two protected section 75 groups, young people and males and NSPCC recommends rescreening the policy and putting in place necessary mitigations or, if the impact is significant, a full EQIA should be conducted including direct consultation with young defendants.</p>	
<p>8. Police Federation NI</p>	<p>Supportive of the reforms being propose and believes this will help bring expediency to the justice process in NI and bring it into line with the rest of the UK.</p>	<p>The Department welcomes this response from the Police Federation of Northern Ireland and its support for committal reform.</p>

<p>9. Probation Board NI</p>	<p>Welcomes the focus the Bill gives to reducing unnecessary delay in the Court process.</p>	<p>The Department welcomes this response from the Probation Board of Northern Ireland and its support for committal reform.</p>
<p>10. PSNI</p>	<p>Recognises the significance of reforming committal proceedings and how this provides an opportunity to improve the experience of victims and witnesses, reduce delay and promote overall confidence in the criminal justice system.</p> <p>Supports the introduction of the Bill, believing it meets the needs of victims and witnesses, and supports the delivery of recommendations from previous inspection reports such as the Gillen Report into the law and procedures in serious sexual offence cases.</p>	<p>The Department welcomes this response from the Police Service of Northern Ireland and its support for committal reform.</p>
<p>11. Public Prosecution Service</p>	<p>The Bill is an extremely important piece of legislation designed to ensure that the very significant statutory reforms to criminal procedure in NI in the 2015 Act are implemented as effectively as possible to deliver the maximum benefit for all users of the criminal justice system, including victims of crime.</p> <p>The Bill is an important first step but PPS indicates that a number of further measures will be required to create the culture change</p>	<p>The Department welcomes the comments made by the Public Prosecution Service. The PPS is a member of all four projects to ensure the efficient and effective implementation of committal reform.</p> <p>As part of the Committal Reform Legislation Project, progress is being made on the development of Court Rules needed to implement committal reform. PPS is a key partner in this work.</p> <p>Further information in relation to digital evidence sharing is provided at Annex 1.</p>

	<p>necessary to maximise the opportunities presented by the new processes including mandatory duties of direct engagement between the parties, proportionate file building and robust case management by judges.</p> <p>Will also need a clear framework not in the Bill but by way of practice direction or, potentially, in the Crown Court rules or statutory case management rules so everyone will know what is expected of them.</p> <p>Outlined that sharing digital evidence with the defence is phase 3 of a Managing Digital Evidence project overseen by the Department. Is unsure of the date for completion of phase 3 but accepts it is an important phase, particularly in the current circumstances everyone is working in. Highlights that there are quite significant IT changes and a number of data protection and general data protection regulation considerations.</p> <p>Is working with the Department to look at costing and the impact that the Bill will have and will be feeding into the Department's modelling of the impact on the courts.</p>	<p>The final Bill will provide a firm foundation for criminal justice organisations to develop and agree business processes and associated Crown Court rules. This will allow resource implications for relevant criminal justice organisations to be modelled and revised legal aid rules to be developed.</p>
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	<p>Also requires a revised legal aid framework that supports front-loading of work and incentivises efficient conduct of cases. Will require a completely different set of legal aid rules and processes for indictable-only offences. Cases will arrive at Crown Court much more quickly, counsel will be instructed much more quickly and the types of hearings will be different. It will be important that the scheme incentivises the early resolution of cases. The defence needs to be properly remunerated for work that needs to be done upfront at an early stage of a case and it will be important that the scheme incentivises the early resolution of issues. The PPS is of the view that the current legal aid scheme does not work to its advantage in that respect.</p> <p>Sees the revision of legal aid as a separate, detailed piece of work rather than part of this Bill.</p> <p>With regard to statutory time limits (custody and case) the PPS witnesses indicated that they were not particularly familiar with bail laws and outlined the view expressed by Sir John Gillen in his review of serious sexual offences that research suggests they have had a limited influence on reducing delays or the length of the criminal justice process. Also expressed the view that statutory time</p>	
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	limits seem to be potentially quite an inflexible rule.	
12. Victim Support NI	<p>Reform of committal proceedings has been a key campaign for Victim Support for several years. The organisation recognises that the primary aim of the Department is to reduce delay and while no one reform can be a panacea to eradicate delay removing committal hearings will go some way to making the trial system more streamlined.</p> <p>Committal hearings can last several days and there is an additional cost to the public purse. It is fair to say they impact on delay in the criminal justice process.</p>	The Department welcomes this response from Victim Support Northern Ireland and its support for committal reform.
13. Derry City and Strabane District Council and Derry and Strabane Policing and Community Safety Partnership (PCSP)	<p>Believes that the Bill will enhance the existing judicial process, improve the operation of the criminal justice system and delivers on the recommendations from the Fresh Start Panel, the NI Audit Office, the CJINI Report and the Gillen Review.</p> <p>Notes that it is a significant element to 'speeding up justice' which is a key priority in the PfG and directly relates to Outcome 7 'We have a safer community where we respect the law and each other.'</p>	The Department welcomes this response from the Derry City and Strabane District Council and Derry and Strabane Policing and Community Safety Partnership (PCSP) and its support for committal reform.

	Recognises that the speed that cases progress through the system matters to victims and witnesses, their families and communities and can help offenders to better understand the implications of their actions.	
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CLAUSE 1 – Abolition of preliminary investigations		
EFM The EFM states that this clause is regarded as self-explanatory and no further information is provided		
Organisation	Views/Comments/Issues relating to Clause 1	Department of Justice Response to comments/issues relating to Clause 1
14. Bar of NI	Highlights that some of these cases ultimately involve serious criminal offences that could see a defendant being deprived of their liberty for many years if convicted. Remains to be convinced that there is any need to remove this option as a safeguard in its entirety as the fundamental principles involved, such as the role committal can play in establishing a prima facie case against a defendant at an early stage, remain unchanged since the passing of the Justice Act in 2015. Is of the view that the retention of the preliminary investigation with	<p>The proposals to directly commit more cases will remove committal hearings and, with that, the option of oral evidence at that stage.</p> <p>But, for cases that are not yet directly committed – and until direct committal is operational – there will continue to be committal hearings with the potential for oral evidence at that stage through a Preliminary Investigation or a mixed committal.</p> <p>Through the Justice Bill in 2015, the Department previously sought to abolish the option to hear oral evidence from victims and witnesses at a committal hearing. The experience of</p>

	<p>oral evidence where it is in the “interests of justice” to do so, akin to Section 7 of the Justice (Northern Ireland) Act 2015, should be given consideration by the Committee.</p> <p>States that the retention of the “interests of justice” safeguard at the discretion of the court is important in taking account of the right to a fair trial, access to justice and in certain cases helping to narrow the issues so as to shorten the trial or obviate the need for one entirely.</p>	<p>giving sometimes traumatic oral evidence, particularly under cross-examination, at both the committal hearing and then again at the Crown Court trial can have a significant impact on victims and witnesses. However, this did not receive sufficient support during the passage of the Bill and, instead, an amendment was made that ensured oral evidence could only be called if a judge was satisfied that the interests of justice require it.</p> <p>However, in 2016 the three person panel appointed by the Executive to report on a strategy for disbanding paramilitary groups recommended that ‘the Department of Justice should bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial’.</p>
<p>15. Law Society NI</p>	<p>Believes that the current interests of justice test in the 2015 Act protects the rights of all parties.</p>	<p>This was accepted by the Executive in its Action Plan published in July 2018 and this Bill gives effect to that commitment.</p> <p>In some instances a Preliminary Investigation or mixed committal proceeding is planned, only to be changed and then proceeded with written evidence through a Preliminary Inquiry. As Sir John Gillen noted in his report, ‘committal proceedings are often listed as a mixed committal, which then turns into a conventional preliminary inquiry hearing on the morning of the matter, after the complainant has suffered the stress and worry of a court appearance, only to be told that they are not required. This is quite unnecessary and that practice should be strongly deprecated, given the additional stress and delay this process is causing.’</p> <p>Besides the obvious impact on victims and witnesses, the preparation and process for these committal hearings can add</p>

		<p>both delay and burden to an already stretched system. We know, for example, that the number of hearings for a Preliminary Investigation or mixed committal can be on average 3 to 4 times greater than those required for a Preliminary Inquiry using only written evidence.</p> <p>The interest of justice test referred to for conducting a PI or mixed committal outlined in the Justice Act (2015) has not been commenced. This places the decision on whether to allow oral evidence at a PI or mixed committal in the hands of the judiciary. As the Department was working with criminal justice partners to introduce the Justice Act (2015) provisions, the Fresh Start Three Person Panel published its report and recommendations.</p>
	<p>States that the committal hearing can provide a check on the discretionary powers of criminal justice agencies by ensuring that unjust or speculative prosecutions do not proceed. Can also inform the accused's pleading decision and may encourage an earlier guilty plea. The weeding out of weak prosecutions and the encouragement of plea-bargaining discussions at committal hearings can save significant costs, time and resources.</p>	<p>The role of the committal hearing is to establish whether there is a prima facie case to justify sending an accused to the Crown Court for trial. A similar test exists once the cases reaches the Crown Court – the No Bill application.</p> <p>Whilst the committal hearing could potentially help to inform the accused's pleading decision, data available to the Department indicates that this is not happening in the majority of cases. Whilst a high proportion of Crown Court cases result in a guilty plea (approximately 60% during 2019), only 13% came at the Arraignment hearing, which is the earliest formal opportunity to do so.</p>
	<p>Highlights that the committal hearing effectively distils the case against the accused by narrowing issues and allows the prosecution to take a pragmatic look at the case as a whole – the primary purpose of</p>	<p>The Department approached PPS for views from an operational perspective on the Law Society's comments regarding plea bargaining at the committal hearing. PPS advise that it does not engage in plea bargaining at any stage</p>

	<p>this pre-trial process will identify the key issues of the case – those in dispute and those that could possibly resolve.</p>	<p>in proceedings as set out in the Code for Prosecutors at paragraphs 4.41 and 5.9 – 5.16.</p> <p>In relation to the comments from the Law Society regarding discussions at committal stage encouraging the early resolution of cases, PPS advise that this is not the PPS experience and is not something it recognises as occurring on a routine basis.</p> <p>In relation to the suggestion that committal proceedings can encourage earlier guilty pleas; the Department would highlight that, at present, within ICP there is a facility for NICTS to record if an accused indicates to the magistrates' court that they intend to plead guilty once a case reaches the Crown Court. The Department understands that this option for recording an early guilty plea (intention) is rarely, if ever, used.</p> <p>The Department also notes that a significant number of cases reaching the Crown Court will result in the accused pleading guilty to at least 1 offence. Available data indicates that, of those cases resulting in a guilty plea, only 13% of defendants enter a guilty plea at the first formal opportunity in the Crown Court (the Arraignment hearing).</p>
	<p>Entire abolition of committal to prevent witnesses giving evidence twice removes an important filtering process. Could still have oral evidence being prevented but allow for a legally trained judge in the Magistrates' Court to assess the evidence and decide if a case should progress.</p>	<p>As indicated above, only 4% of cases during 2019 did not proceed onto the Crown Court – this is also representative of previous years. This small number of cases did not proceed for a variety of reasons included the defendant failing to attend and the PPS withdrawing the case.</p>

	Often not used by lawyers to challenge evidence but believe that if it was used more, a lot of cases that will result in acquittal at the Crown Court could well have been dismissed at an earlier stage.	
	In its written evidence the Society stated that some District Judges (DJs) have indicated to defence solicitors that they favour the retention of committals or a similar process due to their effectiveness in narrowing issues. When giving oral evidence it said that it would be wrong to say that DJs want to retain committal proceedings but what is important is that they are legally qualified and in the best position to assess evidence and make a decision on whether it is sufficient to return someone to the Crown Court.	The Department notes the support given to committal reform by the Lord Chief Justice.

CLAUSE 2 – Abolition of mixed committals: evidence on oath not to be given at preliminary inquiry

EFM

The EFM states that this clause is regarded as self-explanatory and no further information is provided

Organisation	Views/Comments/Issues relating to Clause 2	Department of Justice response to comments/issues relating to Clause 2
16. Bar of NI		See response in relation to oral evidence in Clause 1 above.

	<p>Believes that the right balance was struck by the Justice Act 2015. Remains to be convinced that there is any need to remove this option as a safeguard in its entirety as the fundamental principles involved, such as the role committal can play in establishing a prima facie case against a defendant at any early stage, remain unchanged since the passing of the 2015 Act. Is of the view that the retention of the preliminary investigation with oral evidence where it is in the “interests of justice” to do so, akin to Section 7 of the Justice (Northern Ireland) Act 2015, should be considered by the Committee.</p>	<p>The Department considers that Clause 1 and Clause 2 are required to fulfil Fresh Start Recommendation A10. Retaining the interests of justice test provided for in the 2015 Act falls short of what has been asked for by Fresh Start.</p> <p>The role of the committal hearing is to establish whether there is a prima facie case to justify sending an accused to the Crown Court for trial and not a process to test evidence - that is the purpose of a trial.</p> <p>In general Counsel are engaged once the case is in the Crown Court and it is therefore at this stage the ‘narrowing’ of issues can be more effective in front of the trial judge.</p> <p>As noted above, the experience of giving sometimes traumatic oral evidence, particularly under cross-examination, at both the committal hearing and then again at the Crown Court trial can have a significant impact on victims and witnesses.</p>
	<p>States that the ability to be able to scrutinise and stress-test evidence is important and believes this is better done in the Magistrates’ Court environment where it is done swiftly and closer to the events. Also suggests the need for oral evidence will only apply in a very small minority of cases.</p>	<p>See above.</p>
	<p>Indicates that committal proceedings are useful for narrowing issues at an early stage and potentially reducing the need for lengthy contests in Crown Court for a small number of cases. Allows the defendant an</p>	<p>See above.</p>

	<p>opportunity to assess the case which can result in a plea of guilty if they do not believe they can defend the case or the prosecution may decide there is insufficient evidence for all charges against the accused so some may be dropped. In those case it will not be necessary for the victim/witness to give evidence again at trial.</p>	
	<p>Advises that District Judges are highly professional and must apply an interests-of justice-test to many decisions. If the test was misapplied in these circumstances, it could be subject to judicial review by either the defence or prosecution</p>	<p>Noted.</p>
	<p>While very conscious of the needs of complainants and witnesses the Bar notes that the court already has a range of special measures at its disposal which are frequently adopted either singularly or in conjunction to support individuals to give their best possible evidence. Victim Support Services are also available, and the investigating officer in the PSNI could provide support before and during the course of criminal proceedings to victims, witnesses and complainants</p>	<p>Noted.</p>
	<p>States that the Gillen Review indicates how infrequently oral evidence is required at the committal stage for sexual offences</p>	<p>Sir John Gillen also noted in his report that 'I am in favour of the present steps already enshrined in statute to reform the committal system for complainants. The paucity of cases where any material benefit is achieved for the defendant is completely outweighed by the disproportionate cost and</p>

		<p>stressful nature of such hearings. More importantly is the fact that precisely the same issues of liability can be dealt with by the Crown Court at an equally early stage. I can see no justification, therefore, for continuing with the present system, which is wasteful of time, costs and resources in circumstances where the vast majority of cases will be transferred anyway to the Crown Court.’ (para 9.157)</p> <p>He went on to note ‘I am encouraged to observe that the Assembly’s Committee for Justice shared my view that the current provisions should be extended to include serious sexual offences. In doing so, yet another step to reduce the overall fears that contribute to under-reporting and high rates of attrition could be taken.’ (para 9.160)</p>
	<p>Also highlights that it is not necessarily a victim or complainant who gives oral evidence at mixed committals and it can be technical or expert witnesses and PSNI officers.</p>	<p>The Department accepts that providing oral evidence as part of a PI or mixed committal is not limited to victims and civilian witnesses. One potential benefit of abolishing oral evidence at committal is that police officers and technical or expert witnesses are not required to attend for the duration of those proceedings. For example, police officer time that would have been spent attending a committal hearing could be spent undertaking other front line alternative duties.</p>
	<p>States that Counsel does not want to make the experience more traumatic and a judge would stop any questions that go beyond the bounds of counsel’s professional obligation. Prosecution counsel could also intervene if there was inappropriate questioning.</p>	<p>Noted.</p>

	<p>Suggests the Department should provide the Committee with statistics for: the number of committal cases dismissed; the number of mixed committals dismissed; the number of mixed committals subsequently resolved before trial; the number of mixed committals that go to full trial and in how many cases victims and witnesses have had to give evidence at both committal hearing and the actual court case.</p>	<p>As noted above, during 2019, 1,765 defendants were processed through the traditional committal hearing in the magistrates' court. The majority of defendants (1,656, 94%) proceeded by way of Preliminary Inquiry (PE), 67 defendants (4%) went by way of Preliminary Investigation and 42 defendants (2%) went by way of mixed committal. Overall 96% of these defendants were transferred at this point to the Crown Court and 4% (75 defendants) did not. This includes 97% of those that went by way of PE, 88% by PI and 62% of mixed committals.</p>
	<p>Also questions whether removing oral hearings all at once, even with good intentions to prevent complainants having to give evidence more than once may have unintended consequences.</p>	<p>These changes represent the first phase of the direct committal rollout and future plans will be informed by monitoring and evaluation of the changes. An evaluation will be conducted once a sufficient number of cases have progressed through the system under the new arrangements. The Committal Reform Programme Board has commissioned a work-stream to identify potential benefits, and measures to be monitored in order to ensure the proposals deliver the change required and identify potential issues.</p>

<p>17. Law Society NI</p>	<p>Accepts that the removal of the need to give oral evidence pre-trial may give complainants more faith and confidence in the justice system but that this should only be achieved by not compromising the rights of the accused and the need to prove a case beyond reasonable doubt. The interests of both parties must be delicately balanced at all times. To date the committal process has been intrinsic to upholding article 6 rights in the trial process. An imbalance should not be created as a result of reforms.</p> <p>Believes that increasing use of video evidence by complainants and vulnerable witnesses and other available special measures should be adopted to allow them to fully engage in the process, feel supported and enable them to give best evidence. That should not however undermine the right of a person accused of a serious criminal matter to challenge the evidence against them and indicates that the removal of committal proceedings could interfere with a defendant's article 6 right to a fair trial at an early stage and we should err on the side of the defendant's rights to have a speedy resolution of his or her case rather than waiting for a Crown Court trial.</p> <p>Outlines that if a witness is not to be believed in a Crown Court trial or a victim or</p>	<p>The test for committal differs significantly to the test for conviction in the Crown Court.</p> <p>The purpose of committal is to establish whether there is sufficient evidence available to indicate that a prima facie case has been established – i.e. that there is a case to answer. In order to convict a defendant the prosecution is required to prove the case against that defendant beyond reasonable doubt. There is a further safeguard in place of a No Bill application which allows the defence to apply to the Crown Court to dismiss any, or all, of the charges against the accused, if the court determines that there is insufficient evidence available for a jury, properly directed, to convict the accused.</p> <p>The Department considers that the defendants' right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights is discharged at the trial stage.</p> <p>Please refer to the information provided above in relation to alternative witnesses that can be called.</p> <p>The Department notes the Law Society's comment in relation to engagement at present between prosecution and defence at early stages in the court process. Initiatives such as the Indicatable Cases Process are designed to increase such engagement. As part of the structures to implement committal reform, the Department is creating a Stakeholder Forum to include representatives from the Bar Council of NI, Law Society NI and Victims groups. This will ensure that issues such as those raised by the Law Society of NI can be considered as part of roll out plans.</p>
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	<p>witness is mistaken it may well be in their interests to have the matter dealt with earlier in the Magistrates' Court so, if used properly, the process can be an effective method for protecting defendants and for bringing closure (if that is the right way to put it) to victims and witnesses.</p> <p>Highlights that witnesses called at committal stage are not necessarily victims but can be other witnesses such as police officers.</p> <p>Points out that complainants do not have individual legal representation and therefore may feel they have little control over the process they are involved in. Suggests that Sir John Gillen's recommendations in cases of serious sexual offences will go some way to correct that position and support complainants as they progress through the justice system. Welcomes the funding of three fixed term salaried positions within Victim Support as part of a 2-year pilot project but suggests consideration should be given to extending the scope of the pilot so that complainants may be free to go to a legal advisor of their own choice.</p> <p>Highlights that a more collaborative view between the prosecution and defence on what issues can be identified and agreed on in order to move things forward would be of</p>	
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	<p>benefit. Currently the defence does not really engage with the prosecution until late in the process and that is a difficulty. This would be a change in policy and process rather than requiring legislation.</p>	
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<p>18. Public Prosecution Service</p>	<p>Supports the proposal to abolish oral evidence and states that mixed committals at which oral evidence is heard are undoubtedly a source of delay, adds an unnecessary and unfair burden on victims and creates additional stress and anxiety for victims and witnesses impacting on the ability to give best evidence.</p> <p>Its preferred position is that a victim or witness has clarity at the outset of an investigation that they will only be required to give evidence once; and that the decision to take oral evidence at committal proceedings is not left to the discretion of individual judges.</p> <p>Has adopted this position mindful that where a case is sent to the Crown Court by way of committal, the opportunity still exists to challenge the sufficiency of evidence on papers at preliminary inquiry and also by way of No Bill application in the Crown Court.</p> <p>Notes that the generally recognised position that complete abolition of the right to call witnesses at committal is in no way incompatible with a defendant's absolute right to a fair trial. There are already significant checks and balances in the</p>	<p>The Department welcomes the comments made by the Public Prosecution Service.</p> <p>The PPS is a member of all four projects developed to ensure the efficient and effective implementation of committal reform.</p> <p>As part of the Committal Reform Legislation Project, progress is being made on the development of Court Rules needed to implement committal reform. PPS is a key partner in this work.</p> <p>The Department agrees with the comment made by the PPS and considers that the defendants' right to a fair trial within a reasonable time under Article 6 of the European Convention on Human Rights is discharged at the trial stage.</p>
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	<p>system that ensure that the defendant's fair trial rights are adequately protected.</p> <p>Believes that some cases where witnesses have been cross examined at committal are subsequently resolved by way of guilty plea at the Crown Court. Is of the view that those cases would still have resulted in that guilty plea even if there had been no contested committal proceedings. In such cases, the victim will not need to give evidence at all under the proposed reforms.</p> <p>Is also of the view that the calling of oral evidence at committal does not make any significant contribution to the filtering of weak cases.</p> <p>Outlines that in 2019 75 cases were not returned out of 1765. Has not identified that any were because of undermining of oral evidence. Reasons included defendants not appearing, defendants had died and witness difficulties such as failure to attend or withdrawal statement when the prosecution proactively withdrew those cases rather than them being dismissed by a judge.</p> <p>States that the right to require witnesses to give oral evidence at committal has, on occasion, been used tactically by the defence to test if the victim is resilient</p>	
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	<p>enough to withstand the pressure this creates and there is no significant disincentive for the defence to take this course of action. In those cases where the victim does physically attend court it is not uncommon for the defence to withdraw their demand that the witness be called. The abolition of oral evidence at committal would meant this tactic can no longer be pursued.</p> <p>States that mixed committals can lead to significant delay – aware of examples of mixed committals that have added up to a year or more of avoidable delay - and generate significant additional costs.</p> <p>Notes that it has not yet been determined when the first appearance in the Crown Court will be but it will be a significant change to the NI criminal justice system which has led to the concerns expressed that the Crown Court will become an expensive remand court. While there is undoubtedly that risk, the PPS highlights the opportunity provided by the reforms to allow the Crown Court judge to actively manage serious cases from the outset in a way that does not happen in the current system which is based on a committal process where there is no mandatory engagement between the prosecution and the defence.</p>	
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	<p>This provides for a new level of case management.</p> <p>PPS states that to be effective there is a need for fewer and more effective hearings rather than a lot of hearings in the Crown Court that will be expensive. It wants early engagement between the parties to resolve as much as possible without the need for judicial hearings and parties will need to comply with the detailed directions that it hopes the judges will set out at those hearings.</p> <p>It highlights that England & Wales have criminal procedure rules that set out how Crown Court proceedings should progress after they are directly transferred and there are also a number of practice directions. All of this is brought together under the umbrella of better case management and a handbook effectively summarises the key principles of those and gives all participants a step-by-step process to follow and PPS would strongly support this approach.</p>	
<p>19. Derry City and Strabane District Council & Derry and Strabane PCSP</p>	<p>Agrees that the proposal to abolish oral evidence will speed up the court procedure for victims, witnesses and perpetrators. Believes that those providing evidence often feel they are on trial and to have to go</p>	<p>The Department welcomes this statement from Derry City and Strabane District Council & Derry and Strabane PCSP and agrees with the arguments put forward regarding the need for committal reform.</p>

	<p>through this on at least two occasions is extremely traumatic, unnerving, intimidating and daunting and can often have a negative impact on victims and witnesses.</p>	
<p>20. NSPCC</p>	<p>Supports the abolition of the preliminary investigation and mixed committals process.</p> <p>Data on the volume of children who have been requested to participate at committal hearings has not been made available. However a process that requires them to give evidence more than once during the progression of a case can be deeply traumatic. NSPCC advises that, although it rarely happens, it is the experience of their Young Witness Service practitioners that preparing and giving oral evidence, particularly under cross-examination, both at committal and again at the Crown Court trial, is a significant burden for children and families.</p> <p>For defendants, protection and vindication of their rights should be paramount and NSPCC recognises that delays to justice also have implications for defendants and their right to a fair trial within a reasonable period.</p>	<p>The Department welcomes this statement from NSPCC and agrees with the arguments put forward regarding the need for committal reform.</p>

	<p>Having considered the NIAO, Gillen Review and Criminal Justice Inspection findings that have concluded that committal proceedings deliver little tangible gain, the NSPCC does not consider that the arguments to retain oral evidence at committal outweigh the cost of stress to victims and witnesses nor benefit the accused.</p>	
<p>21. Victim Support NI</p>	<p>Argues that forcing victims of crime to give traumatic evidence more than once in an adversarial trial setting is inhumane. The retraumatising impact can be seen in sharpest focus with victims of sexual assault and rape whose experience of the criminal justice process has been described as some as 'second rape' or judicial rape'. It is also unnecessary as evidenced by the abolition of committal proceedings in other UK jurisdictions.</p> <p>Even with special measures, having to appear and recount what happened can be highly stressful for victims and it is essential that justice organisations and systems are set up to minimise the harm we may cause to victims as they engage with the criminal justice system.</p>	<p>The Department welcomes this statement from Victim Support NI and agrees with the arguments put forward regarding the need for committal reform. Victim Support NI has been briefed on the contents of the Bill and has agreed to be a member of the Stakeholder Forum.</p>

	<p>Having to give oral evidence at committal stage is a potential cause of further harm to witnesses. The process serves only to further intimidate and traumatise victims of crime, in particular victims of sexual violence, and contravenes one of the key aims of the EU Victims Directive to prevent secondary victimisation. It also infringes on obligations under the Istanbul Convention to protect female victims of gender based violence, such as sexual assault and domestic abuse, from “intimidation, retaliation and repeat victimisation” including in legal processes where they seek justice for the harm done to them.</p> <p>It is Victim Support’s experience that PIs and mixed committals are typically used in sexual and domestic violence cases as a means of putting victims off continuing with trial. Rather than the committal system testing evidence, it tests the victim and their resolve.</p> <p>Using tactics to put people off giving evidence cannot be construed as being in the interests of justice.</p> <p>Committal hearing in its current form is a barrier to enabling witnesses to give their best evidence. It is also a confusing addition to the trial process, endured by some</p>	
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	<p>victims who believe it is their trial only to be told they then have to go through it again.</p> <p>Victim Support does not believe the removal of committal hearings will infringe on the rights of the accused to a fair trial as evidence is tested at multiple stages during the criminal justice process and there are multiple mechanisms to safeguard the accused and their presumption of innocence, ensure fair disclosure of evidence and be committed to the rights of a fair trial.</p> <p>On balance, the trauma to victims and the potential for these hearings to be used to pressure witnesses to withdraw from giving evidence presents a much more tangible threat to fairness and justice than their abolition.</p> <p>The fact that so few cases are dismissed at this point would indicate that the PPS is appropriately applying evidential and public interest tests.</p>	
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**CLAUSE 4 – Direct committal for trial
Subsection (3)**

EFM

This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015.

Subsection (3) repeals section 10 of the Justice Act (Northern Ireland) 2015 which provides for the direct transfer to the Crown Court of an accused, upon his or her indication to a magistrates' court (before it has begun to conduct traditional committal proceedings) of an intention to plead guilty to an offence to be prosecuted on indictment.

Organisation	Views/Comments/Issues relating to Clause 4 subsection (3)	Department of Justice response to views/comments/issues relating to Clause 4 Subsection (3)
22. Derry and Strabane District Council & Derry and Strabane PCSP	<p>Recognises the benefits to victims, witnesses and defendants of 'fast-tracking' cases when the accused wishes to plead guilty but there are issues when the defendant changes their plea when the case goes to the Crown Court which necessitates a return to the Magistrates Court which presents significant operational risks, concerns and difficulties. Recognises that this will become obsolete when section 10 of the 2015 Act is repealed and accepts that the proposal to repeal section 10 has been agreed after extensive consultation with relevant criminal justice organisations and agreed by the Criminal Justice Board.</p>	<p>The Department welcomes the response from Derry and Strabane District Council & Derry and Strabane PCSP and support for the proposed changes.</p>
23. Public Prosecution Service	<p>Has always been supportive of the principle that those cases in which a defendant pleads guilty at an early stage should be</p>	<p>The Department welcomes the response from the Public Prosecution Service and support for the proposed changes.</p>

	<p>dealt with expeditiously and proportionately. Whilst disappointed that the Bill removes the potential for direct committal in such circumstances (in non-specified offences) the Department consulted with it and the PPS understands the position that has been adopted.</p> <p>Highlights the importance that there exists the framework to deal proportionately with those cases that are directly committed and which are capable of early resolution by way of a guilty plea. States that formal provision of an early indication provides much needed certainty for the victim and witnesses, allows for the prosecution to serve only that material which is required for an effective sentencing hearing and avoids considerable nugatory work with a consequent reduction in delay and saving of resources.</p> <p>However, in the absence of s10, all direct committals will take place under section 11 and, regardless of an indication from the defence of an intention to plead guilty, the legislation will provide for a potential application to dismiss. This is a potential risk for the prosecution but according to the PPS it can be adequately addressed through careful drafting of the relevant rules and proper case management by the judges. Suggests such case management</p>	<p>The Department also acknowledges the support and input provided by the PPS for the ongoing programme of work required for the successful implementation of committal reform.</p> <p>As part of the Committal Reform Legislation Project, progress is being made on the development of Court Rules needed to implement committal reform. PPS is a key partner in this work.</p>
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	<p>might be usefully aided by the introduction of formal guidance, such as a Practice Direction, to practitioners specifically to address the handling of cases that are directly committed to the Crown Court under the new provisions.</p> <p>Also believes that adjournments to allow the prosecution to build its case would be sufficient to address this risk.</p>	
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<p>CLAUSE 4 – Direct committal for trial Subsection (4)</p>	
<p>EFM</p>	<p>This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015.</p> <p>Subsection (4) amends section 11 of the 2015 Act to amalgamate and streamline sections 11 and 12 of the 2015 Act following the decision by the Department to extend the list of offences to which direct committal will apply. The subsection extends the application of direct committal to include all offences which, in the case of an adult, would be considered to be triable only on indictment. This applies irrespective of the age or circumstances of the accused or the procedural route by which the accused comes to be tried on indictment. The test for the court is whether the offence is, in the case of an adult, triable only on indictment. The subsection also provides the Department with the power to bring forward an order(s) to designate any other offence(s) to which direct committal under Chapter 2 of Part 2 of the 2015 Act will apply. The amendment brings within section 11 the process originally provided for in section 12 of the 2015 Act, whereby an accused, charged with an offence not falling within the direct committal offence types, can be directly committed to the Crown Court if the offence is related to an offence for which a co-accused has been directly committed.</p> <p>Subsection (4) also introduces other changes to support the introduction of direct committal.</p>

- It amends Chapter 2 of Part 2 of the 2015 Act to provide that in cases where an accused is directly committed to the Crown Court for a qualifying offence under that Chapter, the magistrates' court shall at the same time directly transfer any other offence(s) for which the accused is charged that it considers to be related. The subsection defines a related offence as one which the court determines could be included on the same indictment as the offence which is to be directly committed.
- It amends Chapter 2 of Part 2 of the 2015 Act to allow for certain functions of the magistrates' courts, other than those related to committal proceedings, to continue after a case has been directly committed for trial. This provision seeks to maintain consistency with existing arrangements for cases which proceed to the Crown Court through the traditional committal process. This amendment is designed to allow, for example, an accused who is alleged to have breached the conditions of his or her bail in respect of an offence(s) which has been directly committed to the Crown Court, to be brought before a magistrates' court to answer those allegations. Magistrates' courts sit more frequently than Crown Court, and at a greater number of venues across Northern Ireland and this amendment facilitates prompt access to a court so that such allegations can be heard. This in turn is important in order to protect the administration of justice, particularly where there is a risk a defendant might attempt to interfere with the criminal justice process.

Organisation	Views/Comments/Issues relating to Clause 4 subsection (4)	Department of Justice response to views/comments/issues relating to Clause 4 Subsection (4)
24. Bar of NI	<p>Suggests that the Committee may wish to explore the process around how and when the Department intends to add to the list of offences for direct committal in the future.</p> <p>Raises questions regarding what direct transfer and direct committal will look like. Will the case be transferred at first appearance or will it be case-managed for a period of time in the Magistrates' Court and then transferred to the Crown Court? If not at first appearance but at a later date then</p>	<p>The Justice Act (2015) provides for a small number of offences to be added by way of a draft affirmative resolution procedure if needed. By virtue of section 102(7)(a) of the 2015 Act as amended by the Bill, no order under the new section 11(1)(b)(ii) may be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly. This would only take place for a limited number of offences that were linked to other legislative and policy developments.</p> <p>It is the Department's intention to fully roll out direct committal and further primary legislation will be required to achieve this. This first phase will allow learning prior to the development</p>

	<p>what will be the trigger for transferring it to the Crown Court? Is it when there is sufficient evidence for it to go to the Crown Court or when certain witness statements have been provided? When will defence and prosecution counsel be instructed? If transferred to the Crown Court at first appearance will defence counsel be instructed and prosecution counsel instructed to see whether progress can be made to narrow issues or does that come at a later stage? Can an accused be directly committed to the Crown Court without any evidence having been presented by the prosecution?</p> <p>Highlights that the Protocol to Expedite Serious Sexual Offence Cases involving witnesses under 13 years in Belfast may be a useful guide to consider, particularly in relation to how direct transfer may operate more widely in practice.</p> <p>States that it is evident that the proposed reforms will involve the front-loading of more work within the justice system, particularly given the likely impact on the Crown Court. These will only work effectively if investment into the system is forthcoming by the Department and the Legal Services Agency which should include a bespoke system of payment for legal practitioners. Provision for</p>	<p>of further legislative requirements. Further rollouts would require legislation and, therefore, Committee scrutiny.</p> <p>Those cases with relevant offences will be directly transferred at their first appearance in the magistrates' court. Defence and prosecution counsel can be instructed at this stage which will allow for early engagement on the case and appropriate case management be implemented.</p> <p>The Department is receiving updates on the Protocol to Expedite Serious Sexual Offence Cases involving witnesses under 13 years in Belfast and will incorporate any lessons learned into implementation plans.</p> <p>One of the four projects established to deliver the Committal Reform Programme focuses on delivering revised legal aid rules to support the implementation of committal reform.</p>
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	<p>legal aid in these proceedings must be a consideration and the Bar believes that legal aid should continue to be issued by the court subject to the existing statutory tests with an assumption that a criminal legal aid certificate for both solicitor and junior counsel will be granted at the first appearance in the Magistrates' Court.</p>	
<p>25. Law Society NI</p>	<p>Advises that defence solicitors are of the view that removal of the committal stage will inevitably result in some cases that could have been removed from the system due to insufficient evidence remaining in the system for a considerable time and accumulating sizeable costs which have to be met by the public purse. The benefits of committal in terms of reducing charges, narrowing issues and on occasion complete removal of all charges cannot be ignored.</p> <p>Under the new proposals an accused will participate in a Crown Court trial without a statement against him/her being sworn or a witness against him/her being heard. Committal papers are accumulated by the PPS and PSNI and include witness statements signed but not sworn at the time they are made. The 'truth' of the witness statement is not tested until the stage of oral evidence. To date committal has allowed</p>	<p>In the Department's view there are sufficient checks and balances in place within the PSNI and PPS to alleviate the concerns raised by the Law Society.</p> <p>With only 4% of cases not proceeding to Crown Court for a variety of reasons post the committal stage the efficiency of this process is questionable.</p> <p>As the PPS also pointed out in their statement to the Committee, the purpose of the committal stage and the oversight received within the magistrates' court is very different to the case management that can be provided at Crown Court.</p> <p>PPS stated 'It is different because the district judge is looking to get a case to committal. When a case appears before a district judge, as was explained by the Law Society, it can be a matter of seeking updates and wondering how long it will take to get the evidence and how long it will be before the prosecution will be in a position to serve its evidence so that there can be a committal hearing. That engagement does not involve trying to identify whether a case might plead guilty or what issues can be agreed; it is based solely on getting to</p>

	<p>evidence to be tested at an early stage within the system. It is widely accepted there are a minority of cases that are inherently weak. Such cases will not be successfully prosecuted and need to be identified at the earliest opportunity.</p> <p>States that it is very unclear at what point the case will transfer and questions whether this will be at the start of a case, when the defendant is charge or when documents are all gathered etc?</p> <p>Indicates that it is hard to say whether or not there will be an increase in costs without knowing how the process will work. Believes that the current system, which allows for a filtering out of cases at an early stage in the Magistrates' Court, reduces costs, time spent in court and delay. There is the potential to increase costs as a Crown Court judge and two sets of lawyers would be involved in regular case reviews whereas only one solicitor and the Magistrate are generally involved at the Magistrates' Court.</p> <p>Highlights that currently lawyers on both sides often begin discussions at the early stage on how to progress the case and believes that focus by both parties leads to a reduction in delay.</p>	<p>committal and getting through committal. It is not based on setting up the case for trial, getting to trial quickly or reducing the length of time that the trial might take. It is a very different type of supervision.'</p> <p>As stated in the Bill, the intention of the Department is that cases eligible for direct transfer would do so following their first appearance at the magistrates' court. Further appearances would be at the Crown Court were suitable case management can be employed.</p>
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<p>26. Public Prosecution Service</p>	<p>Is supportive of a more ambitious approach to the initial roll-out and considers that the approach of limiting application to offences that are triable only on indictment is clear, easily understood by practitioners and workable in practice. It will also capture the most serious cases and the volumes should be appropriate to an initial phase of roll-out.</p> <p>The change does mean that a significantly greater volume of cases will be subject to direct committal provisions and the potential impact upon each of the criminal justice agencies is considerably greater. Analysis is on-going in relation to the impact upon resources including additional IT costs and the extent of training required for staff. It is difficult to accurately predict the impacts in the absence of clarity in relation to how cases will be managed in the Crown Court and what legal aid reforms are introduced in relation to the payment of counsel.</p> <p>Outlined that under the new provisions, a defendant who appears before a Magistrates' Court charged with an indictable-only offence will be transferred immediately to the Crown Court where second appearance will take place but it has not yet been determined when that will be –</p>	<p>The Department welcomes the comments made by the Public Prosecution Service and the support given to a larger first phase roll-out.</p> <p>The Public Prosecution Service is represented on the four projects that combined will deliver the Committal Reform programme. As such they have a key role in shaping the appropriate implementation of committal reform.</p>
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	<p>in England and Wales it takes place 28-35 days later.</p> <p>States that the Crown Court judge will be able to actively manage the case from the outset and believes it may result in early identification and disposal of cases that can be resolved by way of an early guilty plea or the judge can ensure the parties focus on the issues that can be agreed and narrow the other issues. This is a different type of supervision to that in the Magistrates' Court which seeks updates on when the prosecution will be in a position to serve its evidence for a committal hearing and does not try to identify if there might be a guilty plea and what issues can be agreed between parties thus reducing the length of time a trial might take.</p> <p>Highlights that the defence will have instructed counsel when it gets to the Crown Court. The defence may not be inclined to make concessions before that takes place.</p>	
<p>27. Derry City and Strabane District Council & Derry and Strabane PCSP</p>	<p>Accepts that these offences should now be heard in the Crown Court but the Council has concerns that the Bill allows the Department to designate additional offences to which direct committal will apply in the future by way of an Order which does not</p>	<p>As noted above, the Justice Act (2015) provides for a small number of offences to be added by way of a draft affirmative resolution procedure if needed. By virtue of section 102(7)(a) of the 2015 Act as amended by the Bill, no order under the new section 11(1)(b)(ii) may be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly.</p>

	<p>require primary legislation or Assembly approval but would be shared with the Justice Committee and highlights the reduced level of scrutiny and potential lack of transparency.</p>	<p>This would only take place for a limited number of offences that were linked to other legislative and policy developments.</p> <p>It is the Department's intention to fully roll out direct committal and further primary legislation will be required to achieve this. This first phase will allow learning prior to the development of further legislative requirements. Further rollouts would require legislation and, therefore, Committee scrutiny.</p>
<p>28. NSPCC</p>	<p>Broadly supports the principal of Clause 4 to expand the relevant offences that will be directly committed and supports the policy intention to get more cases to the Crown Court more quickly therein reducing anxiety for young victims and witnesses and reducing delays in case progression.</p> <p>Notes that in 2018 CJINI recommended that rape, serious sexual offences and child abuse offences should be added to the list of offences to be directly committed and that was supported by the Gillen Review.</p>	<p>The Department welcomes the response from the NSPCC and the comments made. It is the Department's intention to fully roll out direct committal in a number of phases. The decision to include these specific offences has been guided by various reports and reviews including Sir John Gillen's Review.</p>

**CLAUSE 4 – Direct committal for trial
Subsection (5)**

EFM

This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015.

Subsection (5) makes some minor amendments to section 13 of the 2015 Act to add flexibility to the nature of court rules required to support the direct committal process, by adding that further arrangements in respect of the documentation associated with direct committal can be provided for in either magistrates' court rules, or Crown Court Rules. This change is primarily designed to allow Crown Court Rules to provide further detail on arrangements for serving documents containing the evidence on which the directly committed charge is based, should those documents not be available to the magistrates' court at the point when the accused is to be directly committed to the Crown Court.

Organisation	Views/Comments/Issues relating to Clause 4 Subsection (5)	Department of Justice response to views/comments/issues relating to Clause 4 subsection (5)
29. Bar of NI	<p>Is concerned that an accused could be directly committed to the Crown Court without any evidence having been presented by the prosecution as this will likely add another layer of delay into the system. Suggests that a much more efficient investigative process on the part of the PSNI in compiling any evidence and the PPS on arrangements for presenting an indictment to the court are needed for it to operate effectively.</p> <p>Questions whether an accused may be required to make a number of make appearances in the Crown Court before it is clear whether there is any evidence to support the case – the cost to the public purse of managing the case at this level is likely to be higher than in the Magistrates'</p>	<p>The Department notes the comments made by the Bar Council of NI with regard to the service of evidence. The information below provides an overview of the Department's planned approach should the provisions in the Bill and the Justice Act (2015) be enacted.</p> <p>For Adult defendants eligible for direct transfer the first appearance in the magistrates' court will be their only appearance, at this point they will be directly transferred and a hearing date set for their first appearance in the Crown Court.</p> <p>For cases that have proceeded by way of summons instead of police charge (approximately 50% of cases), the Prosecution case file will be largely complete and evidence transfer as per 13(2A) of the Justice Act (2015) is given either at the same time as the copy of the notice of committal or as soon as practicable thereafter.</p>

	<p>Court. Alternatively the case may sit at the Magistrates' Court for lengthy periods before it can be transferred due to delays with the gathering of evidence.</p>	<p>For cases that proceed by way of police charge, the Bar of NI and the Law Society are correct that these cases will be at a much earlier stage when they are directly transferred. Being transferred at this early stage, however, will allow for appropriate case management by the judiciary. There is no statute within the Crown Court dictating that the case has to be brought back to Court every 28 days, meaning that the Judge can set a meaningful timetable for review and expectations around evidence review as appropriate to individual cases.</p>
<p>30. Law Society NI</p>	<p>The Law Society also outlines similar concerns stating that many solicitors fear that cases to be the subject of direct transfer may well languish for a considerable time at the Magistrates' Court before they are ready for transfer, unless resources are heavily applied to the PSNI and PPS to allow them to offer a complete file so that the case may transfer.</p> <p>States that it is not yet known how/when information – papers, statements of evidence and disclosure – will be provided. Lack of detail could cause difficulties not only on the defence side but also on the prosecution side if victims or individuals are unaware when, if at all, or how many times they may be required to give evidence.</p>	<p>With regard to the service of evidence please note the response above.</p> <p>With regard to the giving of evidence, if provisions in the Bill are taken forward, oral evidence from victims and witnesses will only be heard at the trial.</p> <p>For those not directly committed under this first phase roll out of direct committal, the traditional committal hearing will proceed as a paper based exercise via a Preliminary Inquiry. No oral evidence from victims and witness will be called. The Department is creating a Stakeholder Forum to include representatives from the Bar Council of NI, Law Society NI and Victims groups. This will ensure that issues such as those raised by the Law Society can be considered as part of roll out plans.</p>

**CLAUSE 4 – Direct committal for trial
Subsection (6)**

EFM

This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015.

Subsection (6) provides the magistrates' court with powers to order the making of inquiries and reports relevant to the sentencing of the accused, should an accused indicate an intention to plead guilty to the offence(s) to be directly committed to the Crown Court. The purpose of this change is to provide the Crown Court with documentation required to support the early disposal, if appropriate, of the case should the accused enter a guilty plea at an early stage in the Crown Court. The subsection provides that the prosecution and the accused must be provided with the opportunity to put forward their views prior to the magistrates' court making a decision regarding the ordering of relevant inquiries or reports.

Organisation

**Views/Comments/Issues relating to
Clause 4 subsection (6)**

**Department of Justice response to
Views/Comments/Issues relating to Clause 4 Subsection
(6)**

31. Bar of NI

Believes that this subsection may support the sentencing and early disposal, if appropriate, of the case should the accused enter a guilty plea at arraignment in the Crown Court. Welcomes the clarification that the accused and prosecution will be afforded the opportunity to make representations prior to the Magistrates' Court deciding whether to order relevant inquiries or reports.

The Department welcomes this response from the Bar of NI.

<p>32. Probation Board NI</p>	<p>Understands why this measure might be in place, but it causes potentially quite significant difficulties where the Magistrates' Court will be permitted to order a Pre-Sentence Report before it appears in a Crown Court listing, on the basis of 'an indication to plead guilty.' Frequently Pre-Sentence Report authors find, particularly in Crown Court cases, that initial charges are either reduced in seriousness or number by the time of conviction. As a result, if the Pre-Sentence Report is requested on the basis of initial charges, legal difficulties would emerge should a reduced charge be put to the defendant in the Crown Court.</p> <p>The Chief Executive stresses that Probation must prepare reports on basis of the convicted offences and it would lead to difficulties for all sides should a report be prepared on what became incorrect offences.</p>	<p>The Department welcomes this response from the Probation Board for Northern Ireland (PBNI) and has engaged with PBNI specifically regarding this concern.</p> <p>The ability to order Pre-Sentence Reports upon receipt of an early indication to plead guilty is allowed for under the current legislation and takes place, albeit infrequently. For illustration, during the calendar years 2019 and 2020, five and four such reports were requested respectively. These reports appear to be largely restricted to the Indictable Cases Process, which forms part of the wider programme of work to reduce avoidable delay in the criminal justice system.</p> <p>Whilst it is anticipated that there will be an increase in such requests, the Department has considered this and has included an additional safeguard in the Criminal Justice (Committal Reform) Bill. This requires the court to afford an opportunity to both the prosecution and the defence to make representations to the court prior to making request for any such reports. This should ensure that reports are only ordered when all parties are agreed that there is a benefit in doing so.</p>
<p>33. Public Prosecution Service</p>	<p>Welcomes this provision which provides that reports and inquiries can be directed in the Magistrates' Court and hopes that the formal process by which such an indication is provided and recorded will be addressed within the relevant Court Rules.</p>	<p>The Department welcomes this comment from the Public Prosecution Service.</p> <p>As indicated above, requests for Pre-Sentence Reports can currently be made at this early stage. A process is currently in place to record and action these requests. Provisions made in the Bill will seek to utilise these existing procedures rather than implement a new or separate process.</p>

		With regard to the new safeguard of seeking representation by both prosecution and defence, these will be addressed within the relevant Court Rules. PPS have representation on the relevant project that will deliver these rules.
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CLAUSE 4 – Direct committal for trial Subsection (7)		
EFM This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015. Subsection (7) provides new powers for the Director of Public Prosecutions for Northern Ireland to discontinue proceedings, directly transferred to the Crown Court under Chapter 2 of Part 2 of the 2015 Act, between committal and the time that an indictment has been presented in the Crown Court. The clause also sets out the arrangements for discontinuing proceedings in such circumstances.		
Organisation	Views/Comments/Issues relating to Clause 4 subsection (7)	Department of Justice response to Views/Comments/Issues relating to Clause 4 Subsection (7)
34. Bar of NI	Accepts the power of the DPP to discontinue proceedings directly transferred may be necessary, given the current format of the Bill. Highlights again however that early stage investigative procedures will need to improve to avoid any unnecessary delay and enhanced early joint engagement	The Department welcomes the comments from the Bar of NI and notes the comments made. Initiatives to improve early stage investigation procedures are being taken forward via the wider Speeding Up Justice programme of work.

	between prosecution and defence will be important in such cases in the Crown Court.	
35. Law Society NI	Believes that this will address the situation where there is a material change in the circumstances of the case e.g. new evidence emerging which will lead the PPS to conclude that the test for prosecution is no longer met.	The Department welcomes the comments from the Law Society NI and the support provided to this provision.

CLAUSE 4 – Direct committal for trial Subsection (8)		
EFM This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015. Subsection (8) amends the process whereby the accused or their representatives can apply to dismiss charges on which they have been directly committed for trial under section 14 of the 2015 Act. This change is designed to maintain consistency with the Department’s commitments to remove the option for victims and witnesses to be called to provide oral evidence on oath in advance of trial.		
Organisation	Views/Comments/Issues relating to Clause 4 subsection (8)	Department of Justice response to Views/Comments/Issues relating to Clause 4 Subsection (8)
36. Bar of NI		Significant consideration was given to this matter.

	<p>Considers it is necessary to retain the potential for oral evidence during applications to dismiss only where required “in the interests of justice” as detailed in the 2015 Act. This judicial oversight function would help to maintain the rights of defendants and complainants in the criminal justice process. Believes it is overly restrictive to remove the judicial oversight function as an option for the court in its entirety.</p> <p>Is of the view that the application to dismiss mechanism could also be useful where there is a relevant pre-trial point which is terminating in nature but requires oral evidence to address that issue through evidence adduced at the application of either prosecution or defence. While expecting it would rarely be used states that it seems overly restrictive to limit the court to considering an application to dismiss only on the papers.</p> <p>Points out that in England and Wales under the Criminal Procedures Rules 2015, both defendant and prosecution may ask for a hearing if required and must explain why it is needed. They can also identify any witness(es) they want to call to give evidence in person with an indication of what that evidence will be.</p>	<p>Recommendation A10 of the Northern Ireland Executive’s Fresh Start Action Plan, flowing from the Fresh Start Agreement in November 2015 and Independent Panel Report into tackling paramilitary activity, called on the Department to further reform committal proceedings to remove the need for oral evidence before trial. Given this recommendation, the Department felt it was necessary to review all instances where oral evidence could be requested from victims and witnesses prior to the actual trial. Provisions made in relation to the Application to Dismiss process were therefore reviewed.</p> <p>The Application to Dismiss process provides a similar function to the current ‘No Bill’ process. This is a process whereby the defence has a right to apply to the Crown Court for some or all charges to be dismissed on the basis that the evidence is insufficient for the accused to be properly convicted.</p> <p>The Criminal Justice (Committal Reform) Bill therefore amends the 2015 Act so that oral evidence may not be given in an Application to Dismiss. The Department considers that the policy is in line with removal of oral evidence pre-trial and is also in line with the current ‘No Bill’ process. The Department is satisfied that the process will allow defendants to successfully challenge cases where the evidence against the applicant would not be sufficient for the applicant to be properly convicted.</p>
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<p>37. Law Society NI</p>	<p>Defence solicitors are concerned that the recent judgement in <i>R v Charles Valliday [2020] NICA 43</i> may limit the usefulness of a 'No Bill' application by the defence. The grounds for appeal against conviction included the trial judge's decision to reject a 'No Bill' application because the insufficiency of evidence in the prosecution's case could be remedied by serving additional evidence. The appeal was dismissed with the appeal judges finding that, while the trial judge did not have concrete material to support this prediction, 'this is not required in every case' and that the trial judge had not erred in law.</p>	<p>The Department has considered the comments in relation to the case of <i>R v Charles Valliday</i> and considered the judgment in depth. The Department is satisfied that the 'No Bill' process provides a fair process for defendants to challenge cases where the evidence does not disclose a case sufficient to justify putting the defendant upon trial for an indictable offence.</p> <p>The Department also considers that the Application to Dismiss process provides a fair procedure in direct committal cases for defendants to challenge a case where it appears that the evidence against the defendant would not be sufficient for them to be properly convicted.</p> <p>The removal of oral evidence in an Application to Dismiss hearing is in line with the commitment to remove oral evidence pre-trial and the Department notes that statistics for 'No Bill' hearings (where oral evidence is not permitted) indicate that they are granted in almost a third of applications.</p>
<p>38. Public Prosecution Service</p>	<p>Supports this provision for the reasons outlined under Clause 2. States that if oral evidence is abolished at committal, it follows that it should be abolished for applications to dismiss, otherwise the policy objectives of the Bill will be undermined and a defendant will have different rights depending on the procedure by which they are sent to the Crown Court.</p>	<p>The Department welcomes these comments from the Public Prosecution Service and support for the proposed changes.</p>

	An application involving oral hearings at the Crown Court would also generate significant costs.	
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CLAUSE 4 – Direct committal for trial Subsection (9)		
<p>EFM This clause makes a number of amendments to the direct committal for trial provisions in Chapter 2 of Part 2 of the Justice Act (Northern Ireland) 2015.</p> <p>Subsection (9) makes a number amendments to Schedule 2 to the 2015 Act, which are mostly minor in nature, or consequential to the changes made to Chapter 2 of Part 2 of the 2015 Act by this Bill. The most substantive change made by the subsection relates to an amendment to paragraph 8 of Schedule 2 to the 2015 Act, which in turn amends the Criminal Procedure and Investigations Act 1996, to define a timeframe in which a prosecutor must disclose to the defence copies of, or provide access to, material which could reasonably be considered to undermine the prosecution case or assist the case of the accused in cases directly transferred under Chapter 2 of Part 2 of the 2015 Act. The duty on the prosecution is to provide this material as soon as is reasonably practicable after the service of the notice of committal and the evidence on which the charge(s) is based as referred to in the revised section 13(2A) of the 2015 Act.</p>		
Organisation	Views/Comments/Issues relating to Clause 4 subsection (9)	Department of Justice response to Views/Comments/Issues relating to Clause 4 Subsection (9)
39. Bar of NI	Highlights that the lack of timely disclosure remains a significant issue for practitioners in the Crown Court as it is frequently delivered at the last minute or even, on occasion, during trials. The outworking of	As noted above, to coordinate the implementation of committal reform the Department has established a multiagency Committal Reform Programme.

	<p>this legislative change is very much contingent upon resources being committed to ensure that the disclosure process operates effectively. This means that all police investigations, including lines of enquiry pointing away from the accused, must be exhausted and statements from all relevant witnesses, medical and forensic reports and all third-party enquiries must be completed in advance to allow this to work effectively.</p>	<p>The Department is also creating a Stakeholder Forum to include representatives from the Bar Council of NI, Law Society NI and Victims groups. This will ensure that issues such as those raised by the Bar of NI can be considered as part of roll out plans.</p> <p>In addition, issues around information disclosure are being considered through the Disclosure Forum, a forum established by the Public Prosecution Service and the Police Service of Northern Ireland to address disclosure issues.</p>
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Digital Evidence Sharing

Background

Digital Evidence Sharing is one of six priority projects contained within the Digital Justice Strategy 2020-25. The project is coordinated by the Department of Justice and involves PSNI, Public Prosecution Service (PPS), NI Courts and Tribunals Service (NICTS), NI Prison Service (NIPS) and also links with the legal profession via the Bar Council and Law Society. Causeway, the messaging system that connects the IT systems of the main Criminal Justice Organisations, enables sharing of the link between organisations for the electronic exchange of digital evidence such as CCTV or Body Worn Video footage.

Scope of the Project

The project delivers the sharing of digital evidence rather than relying on the exchange of encrypted DVDs. The project has three distinct phases:

- Phase 1 – sharing of digital information between PSNI and PPS to enable a prosecution decision to be made.
- Phase 2 – Display of digital evidence in court, where PPS will access digital evidence in court from their own devices.
- Phase 3 – Sharing of digital evidence with the legal profession and defendants. Successful development and delivery of this final project phase will require engagement with the Law Society and Bar Council which has commenced.

Anticipated Benefits

There are a number of anticipated benefits for the project including:

- Allows secure electronic transfer of digital evidence without the use of physical media;
- Reduction in delay;
- Provides a fully auditable solution for electronic transfer of digital evidence; and
- Improved reliability and presentation of evidence at court.

Progress to Date

The first phase of the project commenced on 8 June 2020. Up to 8 March 2021, PSNI has created 5,960 cases in Box (their Digital Asset Management system), saving the production of DVDs by PSNI.

It has been agreed that the second phase of the project, when this digital evidence will be displayed in court, will commence in May 2021.

While much of the development work has been completed for the third phase (the sharing of digital evidence with the legal profession and defendants), there will be further engagement with the Bar Council and Law Society to agree the design of this final phase of work. We anticipate this phase will be commenced before the end of 2021.

Future potential

While this project relates to the sharing of digital evidence between criminal justice organisations currently on the Causeway system, there is potential to enable the sharing of digital evidence with other organisations such as DVA and HMRC which provide digital evidence in cases in the criminal justice system. This is not currently part of this project but may be a further development and is being discussed with relevant organisations.

Impact Assessments

- **Rural Needs Impact Assessment**



Rural Needs Impact
Assessment - Crimin

- **Equality Impact Assessment**



Section 75 Equality
Screening Form - Cri

- **Human Rights Impact Assessment**



Human Rights
Impact Assessment F

Rural Needs Impact Assessment



Title of Strategy, Policy, Plan or Public Service:

Department of Justice – Speeding up Justice Branch

Committal Reform Implementation

Step 1: Define the Issue

Key questions to consider:

- *What are the objectives of the strategy, policy plan or service?*
- *What impact do you intend it to have in rural areas?*
- *How is 'rural' defined for the purposes of this policy/strategy/service/plan?*
- *What would constitute a fair rural outcome in this case?*

Policy Aims / objectives

The Criminal Justice (Committal Reform) Bill contributes to the delivery of a number of political and departmental priorities aimed at tackling avoidable delay in Crown Court cases and support victims and witnesses to give evidence. The Bill will build on provisions within the Justice Act (NI) 2015 to allow certain cases to bypass a traditional committal hearing and be directly committed to the Crown Court, and remove the option that witnesses can be called to provide oral evidence to the court at the traditional committal hearing (for those Crown Court cases still subject to the traditional committal process).

Specifically the Bill will contribute towards the delivery of the following commitments:-

- Recommendations A10 and A11 from the NI Executive's Fresh Start Action Plan, flowing from the Fresh Start Agreement in November 2015 and Independent Panel Report into tackling paramilitary activity, which called on the Department to 'bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial' (*Recommendation A10*), and 'use the measures already available to it [the Department] to abolish committal proceedings in respect of those offences most frequently linked to paramilitary groups, including terrorist offences and offences which tend to be committed by organised crime groups' (*Recommendation A11*);
- Recommendation 3 from the NI Audit Office Report into Speeding up Justice: Avoidable delay in the criminal justice system (March 2018) which called on the Department to 'establish and action plan and timetable for the eradication of the committal process';
- Operational recommendation 5 from the Criminal Justice Inspection Northern Ireland (CJINI) in its Without Witness: A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland (Nov 2018), which recommended that 'Once direct transfer to the Crown Court is established for

murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015'; and,

- Recommendation 110 from Sir John Gillen's report into the law and procedures in serious sexual offences (May 2019) which called on the Department to 'make provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process pursuant to the affirmative resolution procedure under section 11(4) of the Justice Act (Northern Ireland) 2015';

In assessing the potential impact in terms of rural needs, first it may be helpful to understand the context in which the change to be delivered by the Bill is required. A number of key findings from recent relevant inspection / scrutiny reports and agreements are highlighted below: -

Fresh Start Panel Report on the Disbandment of Paramilitary Groups (June 2016)

'Disillusionment with the slow pace of the justice system or seemingly lenient sentences can mean that people are less likely to cooperate with the justice system, with some people still turning to paramilitaries for more immediate redress. Furthermore, the perception that some of those involved in organised crime can evade justice or receive only lenient sentences further erodes respect for the justice system. We note the ongoing reforms aimed at speeding up justice and the planned further reform in this area, including better support for witnesses who come forward. As we note below, there is scope for more to be done in this area.'

'The pace of justice should be further increased. The Executive has committed in A Fresh Start to implement "further measures to speed up criminal justice and support victims to give evidence". While it is crucial that criminal proceedings should follow due process and comply with human rights, justice delayed is justice denied. The time it takes for cases to come to court could be reduced, securing more convictions and building community confidence in the criminal justice system.'

NIAO – Speeding up Justice: avoidable delay in the criminal justice system (March 2018)

'When criminal justice does not perform effectively it can have a significant impact upon the lives of those involved: victims, defendants, witnesses and their families.'

'A key feature of how the system in Northern Ireland has operated has been a failure to complete cases within reasonable timescales.'

'Currently the criminal justice system in Northern Ireland does not deliver value for money. The cost of criminal justice in Northern Ireland is significantly higher than in England and Wales, with no additional benefit arising. Cases take considerably longer to complete than in England and Wales.'

'Participating in a trial can place an enormous burden upon a person: numerous stakeholders described to us how involvement in a serious criminal case can effectively put a person's life on hold until its completion. It is critical for these people that cases do not take an excessive amount of time to progress through the justice system and do not have their progress punctuated by administrative delays and adjournments at court.'

'Two key consequences of the way the system operates are that public confidence in the system is affected and it is more expensive than it should be.'

'The reform of committal is the Department's first move towards eradicating a judicial process which is widely considered as providing minimal value whilst imposing onerous demands upon victims and witnesses.'

'At its worst, committal can effectively amount to a preliminary trial, with victims and witnesses required to provide testimony which they will have to deliver again at trial' in the Crown Court. This is, at the least, stressful to participants and in some cases may deter them from attending for trial.'

CJINI Without Witness – A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland (November 2018)

'Delay was highlighted as an issue by all victims spoken to, particularly for those reporting historical abuse. Victims with particular needs due to, for example, age or disability were especially impacted by avoidable delay.'

'addressing avoidable delay has been a substantial challenge to the criminal justice system in Northern Ireland for a significant period of time. The recommendations made by CJI in previous reports on this topic have not, to date, led to any real change in this issue.'

'...figures demonstrate that there are limited risks involved in abolishing the committal proceedings in these types of cases, as the vast majority will be transferred anyway. Direct committal would also reduce the anxiety for victims and should reduce delays in case progression.'

Gillen Review – Report into the law and procedure in serious sexual offences in Northern Ireland (May 2019)

'Delay in the criminal justice system in Northern Ireland, and in serious sexual offences in particular, has reached a tipping point where not only those inside the system but the general public and the mainstream press are demanding solutions. The injustice of current delay in the system is intolerable. It needs urgent reform'

'There is ample evidence that a long delay not only has an impact on the general perception about the unsuitability of the current criminal justice system, but in some instances contributes to the high attrition rate in terms of withdrawals.'

'Both the complainant's and the accused's ability to recall the alleged offence at trial can be affected by delay. In turn this may influence perceptions of their credibility as a witness, which is particularly important in such cases where there are rarely any other witnesses. The complainant's testimony is likely to be more detailed and accurate closer in time to the alleged incident and, therefore, higher in quality.'

'The paucity of cases where any material benefit is achieved for the defendant is completely outweighed by the disproportionate cost of and stressful nature of such hearings [committal]. More importantly is the fact that precisely the same issues of liability can be dealt with by the Crown Court at an equally early stage. I can see no justification, therefore,

for continuing with the present system, which is wasteful of time, costs and resources in circumstances where the vast majority of cases will be transferred anyway to the Crown Court.'

'I can think of no other area of crime [serious sexual offences], where the stress caused by adjournments when the case is ready for hearing and the prospect of, and the giving of, evidence is more daunting than in crimes of this genre.'

'Complainant after complainant, and indeed accused persons to whom we spoke, without exception, complain of the delay in the system and the impact it had upon them.'

'Responses from those on behalf of people with a disability emphasised, properly in my view, that delay has a particular effect on those who suffer from physical, sensory and learning disabilities or mental ill health.'

New Decade New Approach (January 2020)

The Executive will deliver committal reform to help speed up the criminal justice system, benefiting victims and witnesses.

The Executive will also address: -

- the findings in recently published reports from Criminal Justice Inspection Northern Ireland; and,*
- the report of Sir John Gillen on the handling of serious sexual offences cases, and will deliver the necessary changes in case conduct and management.*

The Department has considered carefully the findings of the reports and agreements outlined above and has sought to address the recommendations through the policy to be delivered through the Bill. In keeping with the commitments outlined above, the primary objective of the Bill is to improve the operation of the criminal justice system by reforming committal proceedings, which is the procedure used to determine whether there is sufficient evidence available to justify putting a person on trial in the Crown Court. The purpose of committal is not to determine whether the accused is guilty of an offence.

Specifically the Bill will: -

- Amend the Justice Act (NI) 2015 to extend the range of offences which will qualify for direct committal to the Crown Court, thus bypassing the traditional committal process, to include any offence which, in the case of an adult defendant, can be tried only on indictment in the Crown Court;
- For those cases which do not attract the direct committal procedure, remove the option of calling victims and witnesses to provide oral evidence as part of the traditional committal process, effectively abolishing preliminary investigations and mixed committals;
- Make a number of other amendments to direct committal arrangements in the Justice Act (NI) 2015 to simply and facilitate the introduction of direct committal.

This is the first phase in the roll out of direct committal. It is the Departments intention to eventually roll out direct committal to all cases to be tried in the Crown Court.

The Department would expect to see the same impact in rural areas as in urban areas. Magistrates' courts and the Crown Court sits in a number of towns across Northern Ireland in more rural areas as well as urban areas and therefore cases progressing in rural and urban areas should be managed and dealt with consistently regardless of the location.

Desired Impact on rural areas

In terms of the main policy objectives of the Bill which are to improve the speed at which certain Crown Court cases progress through the justice system and help improve the experience of victims and witnesses by removing the option that they might be called upon to provide oral evidence on oath at a committal hearing, it is the Department's intention that all participants in relevant criminal cases benefit from the changes introduced by the Bill regardless as to whether or not considered resident of a rural or urban area. More broadly, avoidable delay, and the experience of victims and witnesses are amongst a number of factors which can affect confidence in the criminal justice system. The Department recognizes that confidence in the system is multifaceted, however it is hoped that making improvements in this area may have a positive impact on confidence levels.



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The Department recognises that those living in rural areas who are participants in criminal cases are sometimes inconvenienced by having to travel greater distances to attend court hearings where required, than those living in urban areas. By removing the use of oral evidence as part of the committal process it is hoped that the average number of hearings required to complete committal proceedings can be reduced, thus having a positive impact on those who may otherwise have been required to attend court.

In assessing the impact of the policy on rural areas the Department has not sought to examine crime trends throughout different areas of Northern Ireland, including difference between rural and urban areas. The number of cases dealt with in the Crown Court is relatively low in comparison to the magistrates' court, and a wider range of offences are involved. The Department concluded therefore that more granular analysis of the cases affect could provide distorted results.

Definition of rural for the purposes of the policy

For the purposes of this policy "rural" is defined using the default definition used in Northern Ireland (i.e settlements with fewer than 5,000 residents and open countryside).

Fair rural outcome

The Department considers that a fair rural outcome would be that the policy delivers similar benefits in relation to faster case processing times for relevant Crown Court cases, and the removal of the option to call upon victims and witnesses to provide oral evidence as part of the committal process, to those living in rural areas as those living in urban areas.

Step 2: Understand the situation

Key questions to consider:

- *What is the current situation in rural areas?*
- *What evidence (statistics, data, research, stakeholder advice) do you have about the position in rural areas?*
- *If the relevant evidence is not available, can this be sourced?*
- *Do you have access to the views of rural stakeholders about the likely impact of the policy?*
- *Are there existing design features or mitigations already in place to take account of rural needs?*

Current situation across NI

Committal proceedings are held in the magistrates' courts (the lower court) for the purpose of determining whether there is sufficient evidence available against an accused to justify sending him to the Crown Court (the higher court) for trial. The most common form of committal hearing is conducted as a paper exercise where the magistrates' court will accept written evidence (witness statements, interview transcripts etc.) known as a preliminary inquiry or PE, although the accused retains the right to make representations on his own behalf. The 2nd less common method is that witnesses can be called to provide oral evidence, which is known as a preliminary investigation or PI. A widely held view is that this process can amount to a trial within a trial and the prospect of having to provide oral evidence more than once in a case can cause significant stress to victims and witnesses. A 3rd method is also available, a combination of both PE and PI, which involves a mixture of written and oral evidence.

The impact on victims and witnesses of delay, and the prospect of providing oral evidence at committal, often has a negative impact on their experience of the justice system. The Department has not identified any significant difference between the impact on victims and witnesses from a rural area and those from an urban area. Delay can also have a negative impact on defendants. The longer the time between the commission of an offence or criminal behavior, and the accused, if found guilty, facing criminal sanction for his actions can weaken the link between that offending behavior and the consequences. In many cases an accused may be remanded into custody for a period pending trial. However without a finding, or admission, of guilt the prison service often finds itself limited in delivering to services to, for example, aid rehabilitation. It is also possible that an accused who has spent time in custody on remand pending trial, can be acquitted. Concluding cases more quickly therefore can have significant benefits for all participants.

Table 1: Time taken for charge cases dealt with at Crown Court from date incident reported to disposal at court, 2015/16 – 2019/20

Offence Reported date to Court Disposal date	2015/16	2016/17	2017/18	2018/19	2019/20
Number of cases	502	1,032	671	691	667
Median number of days taken	446	476	427	416	410
Number of days by which 80% of cases completed	640	664	640	633	603
Number of days by which 90% of cases completed	808	785	780	812	783

Table 2: Time taken for summons cases dealt with at Crown Court from date incident reported to disposal at court, 2015/16 – 2019/20

Offence Reported date to Court Disposal date	2015/16	2016/17	2017/18	2018/19	2019/20
Number of cases	313	825	556	536	641
Median number of days taken	704	776	802	866	861
Number of days by which 80% of cases completed	1,099	1,108	1,283	1,364	1,305
Number of days by which 90% of cases completed	1,483	1,341	1,625	1,682	1,655

[Case Processing Time for Criminal Cases dealt with at Courts in Northern Ireland 2019/20 \(Crown Court\)](#)

The Department has also considered the findings from the Northern Ireland Victims and Witness Experience of the Criminal Justice System. The survey is a useful source of information however findings are not disaggregated by the magistrates' and Crown Court processes. Given the significant differences in cases heard at each court tier, the Crown Court will in general deal with the most serious criminal offences such as murder, serious sex cases and serious assaults, whilst the magistrates' courts will hear more minor offences, the data has some limitations. Crown Court proceedings take much longer to complete, and the trial processes itself, where cases proceed to trial, generally will take much longer than a contest in the magistrates' court. It is not uncommon for trials to last for days of even weeks. The experience is therefore much more onerous on victims and witnesses. However there are some general findings from the Victim and Witness survey which are relevant to the policy particularly regarding the views of victims and witnesses of having to attend court to give evidence, and the court experience itself. For the most recent survey published in September 2020, the most frequently identified concerns of victims and witnesses related to coming into contact with the defendant (and his/her supporters)(40% in 2019/20), intimidating behavior of the defendant or his/her supporters (34%), being cross examined (31%). In some areas the figures are improvements on previous findings, however the figures are useful in identifying concerns of victims and witnesses. The full report can be found at [Victims and Witness Experience of the Criminal Justice System in Northern Ireland 2019/20](#).

In relation to the structure of the court system in Northern Ireland, where committal proceedings are conducted; the system is presently arranged into 3 administrative court divisions. The Court venues for each division are set out below: -

North Eastern Division

- Antrim; Ballymena; Belfast; Coleraine; Limavady

South Eastern Division

- Armagh; Craigavon; Downpatrick; Lisburn; Newry; Newtownards

Western Division

- Dungannon; Enniskillen; Londonderry; Magherafelt; Omagh; Strabane



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Magistrates' courts presently sit at each of the 17 locations listed above. Cases will typically be directed to a particular court based on the locality that the alleged offence took place. Table 3 on the page below, based on official statistics published by the Department for the calendar year of 2019 (Judicial Statistics 2019), details the volume of adult and youth criminal cases conducted in each of the magistrates' court locations.

Table 3 - Number of defendants disposed of in magistrates' court in 2019

	Number of adult defendants	Number of youth defendants
Antrim	1485	18
Armagh	978	1
Ballymena	2093	64
Banbridge@Newry	665	2
Belfast	12711	371
Coleraine	1784	35
Craigavon	2750	87
Downpatrick	1242	17
Dungannon	1774	78
Enniskillen	1126	43
Limavady	582	-
Lisburn	2028	66
Londonderry	2992	125
Magherafelt	728	2
Newry	2391	102
Newtownards	3079	201
Omagh	909	31
Strabane	675	13
Total	39992	1256

[Judicial Statistics 2019](#)

The figures in the table above reflect all disposals in the magistrates' court during the period including cases contested in the magistrates' court, as well as cases transferring to the Crown Court for trial. Based on the figures above, almost a 1/3 of magistrates' court criminal business is presently heard in Belfast. More detailed data in relation to committal proceedings is not presently disaggregated by magistrates' court office. NI Courts and Tribunals Service has provided data regarding the overall number of committal hearings since 2015.

Table 4 – Number of committal hearings and number of defendants involved from 2015

Calendar Year	Number of Committal Hearings	Number of Defendants involved
2015	1,475	1,859
2016	1,382	1,717
2017	1,164	1,473



2018	1,178	1,473
2019	1,400	1,765





For the purpose of assessing the impact on rural communities, the Department has made the assumption that the distribution of committal proceedings across Northern Ireland mirrors the proportion of magistrates' criminal business conducted at each of the magistrates' court locations.

In general, a case, once it has been returned for trial, will be allocated to one of the 7 main Crown Court locations in Northern Ireland. Usually this will be within the same administrative court division. On occasion Crown Court cases may be heard at a small number of other court locations. This may be due to a number of factors but the most likely is to facilitate the management of Crown Court business. In such circumstances cases will usually remain within the same administrative court division.

It is also possible in some instances for cases to be transferred to a different administrative court division. A judge will consider a number of factors before making any such decision. Some of the factors which may be considered include court facilities, timing of hearing, and the needs of victims and witnesses.

Based on official statistics published by the Department in 2019, Crown Court cases were conducted in courthouses in the following locations; Antrim, Belfast (Laganside), Craigavon, Downpatrick, Dungannon, Londonderry and Newry. Further details on the number of cases and the number of defendants disposed of at the Crown Court in 2019 can be found in the table below.

Table 5 – Number of cases and defendants disposed of in Crown Court in 2019

	Total no of cases	Total no. of defendants
Antrim	170	195
Belfast	428	533
Craigavon	154	194
Downpatrick	131	173
Dungannon	145	182
Londonderry	144	164
Newry	123	146
Total	1295	1587

The implementation of Committal Reform will have an impact across the Crown Court estate throughout Northern Ireland. The primary aim of the reform is to reduce the time required for Crown Court cases to be concluded, from the point that an incident is reported to police through to disposal at court. It is planned the policy will be implemented in the same way across NI, and will therefore have similar effect across both urban and rural areas.

The Northern Ireland Courts and Tribunals Service produce a quarterly statistical bulletin on throughput at magistrates' and Crown Court venues across Northern Ireland and this is available on their website at www.courtsni.gov.uk

Committal Reform was consulted on via a full public consultation in 2012 and views were received from across the province.



We have stakeholders and delivery partners working in rural areas and we are in contact on a regular basis to keep up to date on developments and any needs arising are monitored and managed.

Step 3: Develop and appraise options

Key questions to consider:

- *Are there barriers to delivery in rural areas?*
- *If so, how can these be overcome or mitigated?*
- *Will it cost more to deliver in rural areas?*
- *What steps can be taken to achieve fair rural outcomes?*

The Department has not identified any barriers to the delivery of this policy in rural areas. Committal Reform will be managed in magistrates' and Crown Courts in rural areas in exactly the same way and following the same procedures as are followed in urban areas. The Department does not therefore anticipate differences to costs in relation to the delivery of the policy in urban and rural areas. The Department will monitor the rollout of the policy closely in conjunction with criminal justice partners, however it is expected the policy design will deliver fair and consistent outcomes across both urban and rural areas.

Step 4: Prepare for Delivery

Key questions to consider:

- *Do the necessary delivery mechanisms exist in rural areas?*
- *Have you considered alternative delivery mechanisms?*
- *What action has been taken to ensure fair rural outcomes?*
- *Is there flexibility for local delivery bodies to find local solutions?*
- *Are different solutions required in different areas?*

The Policy the Bill provides for will be delivered through existing criminal justice structures across Northern Ireland including the various magistrates' and Crown Court offices highlighted above. Although the focus of the Bill is on court processes, and in particular the committal process in the magistrates' court, the Department also intends to bring forward Court Rules to support the process, and is also working closely with criminal justice partner organisations to put in place the necessary measures which will be required at the start of the criminal justice process to enable the successful delivery of the changes. Criminal Justice organisations such as the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service (PPS) are also working to develop their own internal business processes needed to support the change.

In addition to the change to be delivered by the Bill, Court Rules and business process changes, significant changes are needed to the Causeway Data Sharing Mechanism, which facilitates the sharing of case related information across the relevant criminal justice agencies, and the IT systems of the relevant criminal justice agencies. Once the relevant changes have been implemented the modifications to the committal process will be introduced across Northern Ireland on the same basis. The process in major urban areas will be similar to the process in the courthouses which service the more rural areas of Northern Ireland. The legislation, once introduced, along with the supporting Court Rules and business process changes have, or will be designed, on the basis that there are no variations across the province. Each area will follow the same rules and processes, regardless of whether or not those areas are rural / urban.

The same solution is expected to deliver the same outcomes in rural and urban regions and the necessary delivery mechanisms have been considered during development of the project. Implementation and delivery will be managed and monitored by a Project Group comprising representatives from across the criminal justice system. The same delivery mechanism is appropriate taking account of urban and rural needs.

Step 5: Implementation & Monitoring

Key questions to consider:

- *Have you set any rural specific indicators or targets to monitor?*
- *How will the outcomes be measured in rural areas?*
- *Are there any statistics or data that you will collect to monitor rural needs and impacts?*

The introduction of committal reform (the direct committal of certain offences to the Crown Court, and the abolition of oral evidence for those remaining Crown Court offences) will operate on a similar basis across NI. The Department does not anticipate significant differences between different areas / courts. The Department therefore considers that the development of specific rural indicators, over and above the data available to the Department for measuring the speed of the justice system, is not required.

Implementation of Committal Reform is expected to deliver the following outcomes:

- an overall reduction in the time required to process and conclude Crown Court cases;
- reduced demands on victims and witnesses in line with commitment 3.7 of Section A of the Fresh Start Agreement, and recommendations A10 and A11 of the Executive Action Plan;
- fewer court hearings leading to reduced costs;
- more effective use of resources to concentrate on those cases (and the issues within cases) that require additional time;
- increased effectiveness of the justice system

The Department also recognized that excessive delays in the justice system can be a contributory factor in confidence in the justice system. Confidence in the system is multifaceted, with the speed of the system being only one relevant factor. However, faster case processing times, accompanied by improvements in other areas, is likely to have a positive impact on confidence indicators.

In relation to the indicators to measure the success of the reforms, the Department regularly publishes statistics on the average time taken to complete criminal cases. The data is disaggregated by court type and by the method by which the case was initiated (by police charge, or a summons issued by the PPS). Internally the Department has access to more granular management information data which is disaggregated by Court office / location. Upon implementation of the reforms, the Department intends to monitor this information closely to determine the impact on specific court areas, with a view to ensuring the new processes are smoothly rolled out and embedded.

The Department is also presently working with criminal justice partners, through the existing Committal Reform programme structures, to identify a suite of indicators for measuring the delivery of the project.



Step 6: Evaluation & Review

Key questions to consider:

- *What processes are in place to evaluate and review the implementation of the policy, strategy, plan or service?*
- *Have rural needs been factored into the evaluation process?*
- *How will lessons learned in relation to rural outcomes be used to inform future policy making and delivery?*

A Programme Board featuring representation from key criminal justice partners with a role in delivering the changes, has been established and meets on a regular basis to monitor progress and manage issues arising. The Programme Board reports to the Criminal Justice Board (CJB) which comprises the most senior leaders from across the criminal justice system. CJB is chaired by the Justice Minister and key members include the Lord Chief Justice, the Chief Constable and the Director of Public Prosecutions.

An evaluation of the Committal Reform project is scheduled following implementation and is planned to be completed in September 2023. The Evaluation will take account of rural needs and any lessons learnt will be catalogued and used to inform future policy development and implementation, including future rollout plans for the direct committal of a wider range of offences to the Crown Court.

Rural Needs Impact Assessment undertaken by:	Official
Position:	DP Speeding up Justice Branch
Signature:	
Date completed:	10/02/2021

Rural Needs Impact Assessment approved by:	Official
Position:	Grade 7 Speeding up Justice Branch
Signature:	Signed



Date completed:	10/02/2021
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Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie o tha Laa

DOJ Section 75

EQUALITY SCREENING FORM

**Title of Policy: Criminal Justice
(Committal Reform) Bill**

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The Legal Background

Under section 75 of the Northern Ireland Act 1998, the Department is required **to have due regard to the need to promote equality of opportunity:**

- between person of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without; and,
- between persons with dependants and persons without¹.

Without prejudice to the obligations set out above, the Department is also required to:

- **have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group; and**
- **meet legislative obligations under the Disability Discrimination Order.**

Introduction

1. This form should be read in conjunction with the Equality Commission's revised Section 75 guidance, "A Guide for Public Authorities" April 2010, which is available on the Equality Commission's website (www.equalityni.org). **Staff should complete a form for each new or revised policy for which they are responsible (see page 6 for a definition of policy in respect of section 75).**
2. The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations and so determine whether an Equality Impact Assessment (EQIA) is necessary. Screening should be introduced at an early stage when developing or reviewing a policy.

¹A list of the main groups identified as being relevant to each of the section 75 categories is at Annex B of the document.

3. The lead role in the screening of a policy should be taken by the policy decision-maker who has the authority to make changes to that policy and should involve, in the screening process:
 - other relevant team members;
 - those who implement the policy;
 - staff members from other relevant work areas; and
 - key stakeholders.

A flowchart which outlines the screening process is provided at Annex A.

4. The first step in the screening exercise, is to gather evidence to inform the screening decisions. Relevant data may be either quantitative or qualitative or both (this helps to indicate whether or not there are likely equality of opportunity and/or good relations impacts associated with a policy). Relevant information will help to clearly demonstrate the reasons for a policy being either 'screened in' for an equality impact assessment or 'screened out' from an equality impact assessment.
5. The absence of evidence does not indicate that there is no likely impact but if none is available, it may be appropriate to consider subjecting the policy to an EQIA.
6. Screening provides an assessment of the likely impact, whether 'minor' or 'major', of its policy on equality of opportunity and/or good relations for the relevant categories. In some instances, screening may identify the likely impact is none.
7. The Commission has developed a series of four questions, included in Part 2 of this screening form with supporting sub-questions, which should be applied to all policies as part of the screening process. They identify those policies that are likely to have an impact on equality of opportunity and/or good relations.

Screening decisions

8. Completion of screening should lead to one of the following three outcomes. The policy has been:
 - i. 'screened in' for equality impact assessment;
 - ii. 'screened out' with mitigation or an alternative policy proposed to be adopted; or
 - iii. 'screened out' without mitigation or an alternative policy proposed to be adopted.

Screening and good relations duty

9. The Commission recommends that a policy is 'screened in' for equality impact assessment if the likely impact on **good relations** is 'major'. While there is no legislative requirement to engage in an equality impact assessment in respect of good relations, this does not necessarily mean that equality impact assessments are inappropriate in this context.

Part 1

Definition of Policy

There have been some difficulties in defining what constitutes a policy in the context of section 75. To be on the safe side it is recommended that you consider any new initiatives, proposals, schemes or programmes as policies or changes to those already in existence. It is important to remember that even if a full EQIA has been carried out in an “overarching” policy or strategy, it will still be necessary for the policy maker to consider if further screening or an EQIA needs to be carried out in respect of those policies cascading from the overarching strategy.

Overview of Policy Proposals

The aims and objectives of the policy must be clear and terms of reference well defined. You must take into account any available data that will enable you to come to a decision on whether or not a policy may or may not have a differential impact on any of the s75 categories.

Policy Scoping

10. The first stage of the screening process involves scoping the policy under consideration. The purpose of policy scoping is to help prepare the background and context and set out the aims and objectives for the policy, being screened. At this stage, scoping the policy will help identify potential constraints as well as opportunities and will help the policy maker work through the screening process on a step by step basis.
11. Public authorities should remember that the Section 75 statutory duties apply to internal policies (relating to people who work for the authority), as well as external policies (relating to those who are, or could be, served by the authority).

Information about the policy

Name of the Policy

Committal Reform - The Criminal Justice (Committal Reform) Bill

Is this an existing, revised or a new policy?

The Criminal Justice (Committal Reform) Bill is a revised policy which seeks to amend Part 2 of the Justice Act (NI) 2015 which relates to the reform of Committal Proceedings. The policy to be delivered through the Bill has previously been screened. However, following consultation with criminal justice partners and the Criminal Justice Board, the draft Criminal Justice (Committal Reform) Bill was amended in August 2020 to allow for more expansive reform of the committal process which is widely regarded as a source of delay in criminal cases to be tried in the Crown Court. The impact assessment has therefore been revised to reflect the policy intent of the Bill.

The Bill aims to assist the department in the delivery of a number of political and departmental commitments including recommendations arising from the Fresh Start Action plan to abolish the use of oral evidence in committal proceedings for victims and witnesses, and also expand on the committal reform provisions enacted in the Justice Act (Northern Ireland) 2015 to allow for any offence, which in the case of an adult defendant, is triable only on indictment to be directly committed to the Crown Court.

What is it trying to achieve? (intended aims/outcomes)

The Bill contributes to the delivery of a number of political and departmental priorities aimed at tackling avoidable delay in Crown Court cases and support victims and witnesses to give evidence by removing the option that witnesses can be called to provide oral evidence to the court at the traditional committal hearing.

Specifically the Bill will contribute towards the delivery of the following commitments:-

- Recommendations A10 and A11 from the NI Executive's Fresh Start Action Plan, flowing from the Fresh Start Agreement in November 2015 and Independent Panel Report into tackling paramilitary activity, which called on the Department to 'bring forward draft legislation to further reform committal proceedings to remove the need for oral evidence before trial' (*Recommendation A10*), and 'use the measures already available to it [the Department] to abolish committal proceedings in respect of those offences most frequently linked to paramilitary groups, including terrorist offences and offences which tend to be committed by organised crime groups' (*Recommendation A11*);

- Recommendation 3 from the NI Audit Office Report into Speeding up Justice: Avoidable delay in the criminal justice system (March 2018) which called on the Department to 'establish an action plan and timetable for the eradication of the committal process';

- Operational recommendation 5 from the Criminal Justice Inspection Northern Ireland (CJINI) in its Without Witness: A thematic Inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland (Nov 2018), which recommended that ‘Once direct transfer to the Crown Court is established for murder and manslaughter cases, the DoJ should ensure that rape, serious sexual offences and child abuse offences be added to the list of specified offences under the Justice Act (Northern Ireland) 2015’; and,

- Recommendation 110 from Sir John Gillen’s report into the law and procedures in serious sexual offences (May 2019) which called on the Department to ‘make provision for the direct transfer of serious sexual offences to the Crown Court, bypassing the committal process pursuant to the affirmative resolution procedure under section 11(4) of the Justice Act (Northern Ireland) 2015’;

In assessing the potential impact in terms of section 75 groups, first it may be helpful to understand the context in which the change to be delivered by the Bill is required. A number of key findings from the relevant inspection / scrutiny reports and agreements are highlighted below: -

Fresh Start Panel Report on the Disbandment of Paramilitary Groups (June 2016)

‘Disillusionment with the slow pace of the justice system or seemingly lenient sentences can mean that people are less likely to cooperate with the justice system, with some people still turning to paramilitaries for more immediate redress. Furthermore, the perception that some of those involved in organised crime can evade justice or receive only lenient sentences further erodes respect for the justice system. We note the ongoing reforms aimed at speeding up justice and the planned further reform in this area, including better support for witnesses who come forward. As we note below, there is scope for more to be done in this area.’

‘The pace of justice should be further increased. The Executive has committed in A Fresh Start to implement “further measures to speed up criminal justice and support victims to give evidence”. While it is crucial that criminal proceedings should follow due process and comply with human rights, justice delayed is justice denied. The time it takes for cases to come to court could be reduced, securing more convictions and building community confidence in the criminal justice system.’

NIAO – Speeding up Justice: avoidable delay in the criminal justice system (March 2018)

‘When criminal justice does not perform effectively it can have a significant impact upon the lives of those involved: victims, defendants, witnesses and their families.’

‘Participating in a trial can place an enormous burden upon a person: numerous stakeholders described to us how involvement in a serious criminal case can effectively put a person’s life on hold until its completion. It is critical for these people that cases do not take an excessive amount of time to progress through the justice system and do not have their progress punctuated by administrative delays and adjournments at court.’

'The reform of committal is the Department's first move towards eradicating a judicial process which is widely considered as providing minimal value whilst imposing onerous demands upon victims and witnesses.'

'At its worst, committal can effectively amount to a preliminary trial, with victims and witnesses required to provide testimony which they will have to deliver again at trial' in the Crown Court. This is, at the least, stressful to participants and in some cases may deter them from attending for trial.'

CJINI Without Witness – A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland (November 2018)

'Delay was highlighted as an issue by all victims spoken to, particularly for those reporting historical abuse. Victims with particular needs due to, for example, age or disability were especially impacted by avoidable delay.'

'addressing avoidable delay has been a substantial challenge to the criminal justice system in Northern Ireland for a significant period of time. The recommendations made by CJI in previous reports on this topic have not, to date, led to any real change in this issue.'

'...figures demonstrate that there are limited risks involved in abolishing the committal proceedings in these types of cases, as the vast majority will be transferred anyway. Direct committal would also reduce the anxiety for victims and should reduce delays in case progression.'

Gillen Review – Report into the law and procedure in serious sexual offences in Northern Ireland (May 2019)

'Delay in the criminal justice system in Northern Ireland, and in serious sexual offences in particular, has reached a tipping point where not only those inside the system but the general public and the mainstream press are demanding solutions. The injustice of current delay in the system is intolerable. It needs urgent reform'

'There is ample evidence that a long delay not only has an impact on the general perception about the unsuitability of the current criminal justice system, but in some instances contributes to the high attrition rate in terms of withdrawals.'

'Both the complainant's and the accused's ability to recall the alleged offence at trial can be affected by delay. In turn this may influence perceptions of their credibility as a witness, which is particularly important in such cases where there are rarely any other witnesses. The complainant's testimony is likely to be more detailed and accurate closer in time to the alleged incident and, therefore, higher in quality.'

'The paucity of cases where any material benefit is achieved for the defendant is completely outweighed by the disproportionate cost of and stressful nature of such hearings [committal]. More importantly is the fact that precisely the same issues of liability can be dealt with by the Crown Court at an equally early stage. I can see no justification, therefore, for continuing with the present system, which is wasteful of time, costs and resources in circumstances where the vast majority of cases will be transferred anyway to the Crown Court.'

'I can think of no other area of crime [serious sexual offences], where the stress caused by adjournments when the case is ready for hearing and the prospect of, and the giving of, evidence is more daunting than in crimes of this genre.'

'Complainant after complainant, and indeed accused persons to whom we spoke, without exception, complain of the delay in the system and the impact it had upon them.'

'Responses from those on behalf of people with a disability emphasised, properly in my view, that delay has a particular effect on those who suffer from physical, sensory and learning disabilities or mental ill health.'

New Decade New Approach (January 2020)

The Executive will deliver committal reform to help speed up the criminal justice system, benefiting victims and witnesses.

The Executive will also address: -

- *the findings in recently published reports from Criminal Justice Inspection Northern Ireland; and,*
- *the report of Sir John Gillen on the handling of serious sexual offences cases, and will deliver the necessary changes in case conduct and management.*

The Department has considered carefully the findings of the reports and agreements outlined above and has sought to address the recommendations arising through the policy to be delivered through the Bill. In keeping with the commitments outlined above, the primary objective of the Bill is to improve the operation of the criminal justice system by reforming committal proceedings, which is the procedure used to determine whether there is sufficient evidence available to justify putting a person on trial in the Crown Court. The purpose of committal is not to determine whether the accused is guilty of an offence.

Specifically the Bill will: -

- Amend the Justice Act (NI) 2015 to extend the range of offences which will qualify for direct committal to the Crown Court, thus bypassing the traditional committal process, to include any offence which, in the case of an adult defendant, can be tried only on indictment in the Crown Court;
- For those cases which do not attract the direct committal procedure, remove the option of calling victims and witnesses to provide oral evidence as part of the traditional committal process, effectively abolishing preliminary investigations and mixed committals;
- Make a number of other amendments to direct committal arrangements in the Justice Act (NI) 2015 to simply and facilitate the introduction of direct committal.

This is the first phase in the roll out of direct committal. It is the Departments intention to eventually roll out direct committal to all cases to be tried in the Crown Court.

Are there any Section 75 categories which might be expected to benefit from the intended policy? If so, explain how.

The various inspection / scrutiny reports referred to above clearly highlight the negative impact of present delays on all participants in criminal proceedings.

Processing more quickly the Crown Court cases which will be affected initially by committal reform is expected to have a positive impact on all participants in these cases including victim and witnesses, and defendants. The Department recognises that young adult males in particular represent a disproportionately high number of defendants in Crown Court cases and are expected to benefit as cases are expected to be resolved more quickly and clarity regarding the outcome is known at an earlier stage. Other section 75 data in relation to defendants is limited.

Section 75 data regarding victims and witnesses is not routinely collected however one of the primary concerns of the Department in developing the policy has been to make improvements to the criminal justice system to support all victims and witnesses. The Department expects the policy to have a positive impact on victims and witnesses as it will help to reduce potential stress on victims and witnesses by removing the possibility that they could be called upon to provide oral evidence as part of the committal process. The reports outlined above also clearly outline the impact that the current delays in the system have on victims and witnesses.

It is a widely accepted principle that, where it is appropriate, that cases involving youth defendants are heard in the youth magistrates' court. Only a small number of cases in which there is a youth defendant are sent to the Crown Court for trial. Unlike adults, the only offence for which a youth defendant must be tried in the Crown Court is homicide / murder. Many serious youth cases including serious sexual offences and serious assaults, which if the defendant was an adult would be triable only in the Crown Court, can be heard in the youth court. One of the key differences between the youth court and the Crown Court is the speed at which cases progress, with youth cases progressing significantly faster. The Department has developed the policy on the basis that cases involving youth defendants should continue to be heard in the youth court, where appropriate. However, for those that should be heard in the Crown Court, the Department has ensured that they too can be directly committed for the same offences as in the case of an adult.

Who initiated or wrote the policy?

The Department has developed / revised the policy, in conjunction with criminal justice partners, in line with commitments arising from the various inspection / scrutiny reports and agreements outlined earlier in this document. The Criminal Justice Board, on which the key leaders within the justice system such as the Lord Chief Justice, Chief Constable, and the Director of Public Prosecutions, and the Justice Minister, are represented, have been consulted throughout the development of the policy. The policy seeks to build on the committal reforms initially provided for in Part 2 of the Justice Act (NI) 2015.

Abolishing the need for victims and witnesses to give oral evidence at committal is a recommendation by the three person panel appointed by the Northern Ireland Executive to develop recommendations in response to the Fresh Start Agreement. The Department previously attempted to introduce the measure in the Justice Bill 2015 (enacted as the Justice Act (Northern Ireland) 2015), however the proposal did not receive sufficient support in the Assembly at that time. The 2015 Act also

provides the basis for direct committal in certain circumstances on which this Bill attempts to build by extending the list of offences which will initially qualify for the direct committal process to include, all offence, which in the case of an adult defendant, are triable only on indictment in the Crown Court.

Who owns and who implements the policy?

The Department of Justice owns, and along with criminal justice partners is responsible implementing of the policy. In particular Police Service of Northern Ireland (PSNI), Public Prosecution Service (PPS), Northern Ireland Courts Tribunals Service (NICTS), Northern Ireland Prison Service (NIPS) and the judiciary will play key roles in implementing the reforms.

Implementation factors

12. Are there any factors which could contribute to/detract from the intended aim/outcome of the policy/decision?

If yes, are they

- financial
- legislative
- other, please specify: administrative improvements such as a range of other initiatives presently being taken forward to speed up the justice system.

Main stakeholders affected

13. Who are the internal and external stakeholders (actual or potential) that the policy will impact upon?

- staff
- service users
- other public sector organisations
- voluntary/community/trade unions
- other, please specify: Judiciary, Justice Committee, Bar Library, Law Society

Other policies with a bearing on this policy

- what are they?
 - Fresh Start – the Executive action plan (published July 2016);
 - New Decade New Approach (NDNA) – agreement of 9th January 2020 which restored the NI Executive.
 - The Northern Ireland Audit Office (NIAO) report – Speeding up Justice: Avoidable Delay in the criminal justice system (March 2018)
 - Criminal Justice Inspection – Without witness; A thematic inspection of the handling of sexual violence and abuse cases by the criminal justice system in Northern Ireland (November 2018)
 - Sir John Gillen’s report into the law and procedures in serious sexual offences (May 2019)
 - Programme for Government Indicator 38 provides a focus for improving the performance of the criminal justice system by improving the processing times for criminal cases;
 - Victim Charter;
 - The Indictable Cases Process (ICP) rollout;
 - Staged forensic reporting arrangements; and,
 - Speeding up justice (SUJ) initiatives
- who owns them?
 - Fresh Start, Programme for Government and NDNA are owned by the Executive;

- The Department is responsible for co-ordinating the responses in respect of the NIAO Speeding up Justice: Avoidable Delay in the criminal justice system report, CJINI's Without witness report and Sir John Gillen's review into the law and procedures in serious sexual offences,
- Victim Charter owned by Criminal Justice partner agencies;
- Staged forensic reporting arrangements are owned by FSNI/PSNI; and
- SUJ managed by DOJ with input from CJ stakeholders

Available evidence

14. Evidence to help inform the screening process may take many forms. Public authorities should ensure that their screening decision is informed by relevant data.
15. What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

Section 75 Category	Details of evidence/information
Religious belief	<p>The Department periodically publishes a range of reports relating to various aspects of the justice system, such as reports on Court prosecutions, convictions and out of court disposals. Some information contained in these reports is relevant to understanding the impact of the Criminal Justice (Committal Reform) Bill on particular section 75 groups. The reports are produced by the Department's Analytical Services Group (ASG) and the source for the information is the Causeway IT system. In terms of the specific section 75 groups on which relevant information is available, this is generally limited to the categories relating to age and gender. The Department also collects / has access to some specific data in relation to Crown Court cases including case volumes, disposal types and the time taken to complete cases. The Department also has access to some data regarding participants in Crown Court cases. However, in general information relates to defendants rather than other groups of participants such as victims and witnesses.</p> <p>.</p>

The changes proposed in the Bill, and the committal reforms in the 2015 Act, are aimed at cases which are prosecuted in the Crown Court. However speeding up cases through the committal process by abolishing the use of oral evidence at committal and the introduction of the new direct committal procedure may also ease pressure on the magistrates' courts.

Data available to the Department indicates that a committal hearing in the magistrates' court in which a victim or witness is required to provide oral evidence (*known as a Preliminary Investigation (PI) or mixed committal*) requires a significantly higher number of court hearings than a case in which a committal is conducted "on the papers" (*a Preliminary Inquiry (or PE)*). Figures provided by the Northern Ireland Courts and Tribunals Service indicates that in 2019 it took on average 6.4 hearings in the magistrates' courts to conduct a PI and 7 hearings for a mixed committal. In contrast, PEs (*committal conducted without oral evidence from a victim or witness*) were on average completed in 2.1 hearings. Although PIs and mixed committals can take significantly more hearings before a case is committed to the Crown Court, they only account for a very small proportion of cases going through committal proceedings (74 cases (109 defendants) out of 1,400 in 2019). Some section 75 data is available in respect of Crown Court cases generally, however, section 75 data in connection with the various types of committal proceedings is not routinely collected.

The implementation of the committal reforms as proposed in the Bill will initially provide that cases involving offences that can only be tried on indictment in the Crown Court, are directly transferred to the Crown Court for trial / sentencing.

The Crown Court hears only the most serious cases. The Department issued a statistical publication on Court Prosecutions, Convictions and Out of Court disposals in June 2020 which covered cases disposed of in 2019. The report highlighted the proportion of convictions in the Crown Court resulting in a custodial sentence being handed down was much greater than in magistrates' court cases. In 45.1% of cases where there was a conviction in the Crown Court a custodial sentence was handed down compared to 11% in the magistrates' courts. Therefore one of the potential impacts the Bill is expected to have is that defendants will be sentenced, and where appropriate imprisoned, more quickly after an offence has been reported to police. One anticipated consequence of speeding up serious cases is that the time spent by a defendant imprisoned on remand (prior to conviction) is likely to reduce. A judge will take into account the time spent on remand when passing sentence, in some circumstances, for example where a defendant is acquitted of all charges, there is little that can make up for the freedom lost through time spent in custody on remand.

The available data indicates that younger males in particular are disproportionately represented as defendants in Crown Court cases. There is insufficient data to determine at present the impact of the Bill on those of differing religious beliefs. It is envisaged that this policy will have a positive impact on all participants in Crown Court cases. The benefits for victims and witnesses are clear as the conclusion of a criminal case may bring some form of closure and allow them to move on with their lives. Earlier conviction and sentencing also has benefits for defendants as it may help to establish more clearly the link between offending behaviour and the consequences. Many sentences handed down contain a rehabilitative

	<p>element which benefits defendants by preparing them for integration back into society upon their release.</p>
Political opinion	<p>This information is not routinely captured for participants in Crown Court cases.</p>
Racial group	<p>This information is not routinely captured for participants in Crown Court cases.</p>
Age	<p>The Court Prosecutions, Convictions and Out of Court disposals report was published in June 2020 and covered cases disposed of in 2019. Within the report it was recognised that the age group of defendants for which the highest percentage of prosecutions (28.6%) were brought in the Crown Court was for the 30-39 year old age group. This mirrors the age profile of defendants in the magistrates' courts where the age group against which the highest percentage of prosecutions were brought was also the 30-39 year old age group (28.3%).</p> <p>Proportionally, a smaller percentage of prosecutions in the Crown Court (0.3) were against those aged 10-17, when compared against the magistrates' courts where that particular cohort represented 3.2% of defendants.</p> <p>Conviction in the Crown Court is also much more likely to result in a custodial sentence. In 2019, 45.1% of convictions in the Crown Court resulted in a custodial sentence (48.4% of males convicted received a custodial sentence compared with 21.1% of females).</p> <p>Data regarding the age of other participants, such as victims and witnesses, is not routinely captured / reported on.</p>
Marital status	<p>This information is not routinely captured for participants in Crown Court cases.</p>

Sexual orientation	This information is not routinely captured for participants in Crown Court cases.
Men and Women generally	<p>In the most recent Court Prosecutions, Convictions and Out of Court disposals statistical publication, published in June 2020, it was reported that 87.7% (1,346 of 1,534) of defendants in the Crown Court during 2019 were male and 12% (184) are female. This information is not disaggregated by offence type however as the overwhelming majority of defendants in Crown Court cases are male it is assumed the cases affected by this policy will predominantly feature males as defendants.</p> <p>Conviction rates for men and women in Crown Court cases in 2019 were 87.9% and 82.6% respectively.</p> <p>Of those defendants convicted, 48.4% of men, and 21.1% of women received a custodial sentence.</p> <p>In relation to those defendants in custody, the Department published statistics on the Northern Ireland Prison Population for 2019/20 in September 2020. Key points from the data include that the proportion of prisoners on remand has increased steadily from 23.3% in 2014/15 (419) to 32.4% for 2019/20 (492). Over the same period the proportion of prisoners held after receiving a sentence with an immediate custodial element has decreased year on year from 76.5% (1,376) in 2014/15 to 67.2% (1,018) in 2019/20. In 2018/19 the number of prisoners held after receiving a sentence with an immediate custodial element was lower (1,006) than in 2019/20, albeit this still accounted for a greater proportion of the total number of individuals held in prison (69.5%) than for 2019/20.</p>

	Information regarding the gender of victims and witnesses is not routinely reported on.
Disability	This information is not routinely captured for participants in Crown Court cases.
Dependants	This information is not routinely captured for participants in Crown Court cases.

Needs, experiences and priorities

16. Taking into account the information referred to above, what are the different needs, experiences and priorities of each of the following categories, in relation to the particular policy/decision? Specify details for each of the Section 75 categories.

Section 75 Category	Details of evidence/information
Religious belief	<p>Having to give oral evidence as a victim or witness at a committal hearing can be a traumatic experience for victims and witnesses. This can impact on any victim or witness regardless of their religious belief. Although they may still be required to provide oral evidence at a trial in the Crown Court, removing the possibility that victims and witness may also have to provide oral evidence before the case reaches that stage is expected to reduce some of the stress that victims and witnesses experience as a result of coming into contact with the criminal justice process. The changes should, in general, mean that where victims and witnesses have to give oral evidence it should only be in the event that a case proceeds to trial in the Crown Court.</p> <p>Abolishing oral evidence and directly committing certain cases to the Crown Court, without the need for a committal hearing, will also reduce avoidable delay in the system. The Department recognises that lengthy criminal cases have a negative impact on all participants whether they are victims, witnesses or defendants. In 2019/20 the average (median) time taken to complete criminal cases was 565 days. Many cases however took significantly longer – the time taken to complete 80% of cases was over 1,000 days (1,004). Having the prospect of participating in criminal</p>

	<p>proceedings hanging over victims, witnesses and also defendants for such a protracted period can cause individuals significant stress. All section 75 groups have broadly similar needs in this regard, although it is recognised that the impact on young people where they are at key stages of their development, may be greater.</p> <p>Abolishing oral evidence at committal will reduce avoidable delay associated with arranging a date for a committal hearing to suit the availability of all witnesses required to give evidence. The speed of the hearing itself is also expected to be quicker as committal hearings at which witnesses are required to provide oral evidence generally take longer than those conducted solely on the papers.</p> <p>The streamlined new direct committal process, for which the Bill makes additional provision and which will apply initially in cases involving offences that can only be tried on indictment will also reduce delay in those cases. The new provisions will see relevant cases transferred to the Crown Court at an earlier stage than present where they can be case managed by a Crown Court judge.</p> <p>The Department has not identified any group under this section 75 category which has different needs, experiences or priorities from any other groupings or society in general.</p>
Political opinion	As above
Racial group	Participants from different racial groups have the same needs, experiences and priorities as other groups in terms of the impact that delay and the potential stress

	<p>of having to give evidence at a committal hearing. The negative impacts of delay can be exacerbated where the participant does not have a strong understanding of the English language. Unfamiliarity with Northern Ireland's criminal justice system, and in particular, committal proceedings which have been abolished in many comparable jurisdictions, may also be a cause of confusion and potential source of stress.</p> <p>Measures are presently in place to support victims and witnesses to provide evidence through interpreters, and similar measures exist to support defendants. Removing the option of oral evidence at committal, and the introduction of direct committal is however expected to have a positive impact in that it brings Northern Ireland more into line with comparable jurisdictions as well as reduces a potential source of stress (having to provide oral evidence at committal).</p>
Age	<p>Having to provide oral evidence at committal can be a distressing experience for anyone regardless of section 75 grouping. Some protections exist in legislation to facilitate vulnerable or intimidated witnesses to provide their best evidence to the Court. Vulnerable witnesses include children under the age of 17. These measures included being able to provide evidence from behind a screen or by way of video link from a room outside the courtroom. The measures can also be applied to some older witnesses upon a successful application by the prosecution to the court.</p> <p>The effect of delay in Crown Court cases can have a greater effect on young people, regardless of whether they are a victim, witness or defendant. Careful consideration is always given to the correct jurisdiction for prosecuting young people. It is a widely accepted</p>

principle that cases involving youth defendants should be heard in the youth court, where appropriate. This is reflected through the criminal justice framework which provides that the only offence for which a youth defendant must be prosecuted on indictment in the Crown Court is homicide. Other offences types may be tried in the Crown Court where the particular facts or circumstances of the case merit such an approach. The approach is significantly different for adults where there is a much larger list of offences which can only be tried on indictment in the Crown Court.

There is insufficient evidence to identify any significant difference in processing times between Crown Court cases involving young people, and Crown Court cases involving adults. The Bill however seeks to protect the principle that cases involving youth defendants should continue, where it is appropriate, to be heard in the Youth Court.

In recognition of the impact of delay on young victims in sexual offence cases, the Office of the Lord Chief Justice has commissioned a pilot where by cases involving young people aged 13 and under are directly committed to the Crown Court, bypassing the traditional committal process using the direct transfer procedure provided for at Article 4 of the Children's Evidence (Northern Ireland) Order 1995 – a process which has some similarities to the direct committal process provided for in the Justice Act (NI) 2015, which the Department now seeks to building on through the present Bill. The pilot is in the early stages but cases progressing this way have, to date, resulted in a much speedier process.

	<p>For a young defendant the time between committing an offence and the conclusion of a criminal case can be relevant to their understanding of the consequences and can also have a bearing on future offending behaviour.</p> <p>Progressing cases in a timely manner also has benefits for young victims and witnesses. The justice system contains various features to tailor for the needs of young victims and witness however the experience of going through, sometimes lengthy, criminal proceedings can be difficult. The impact on young people can be exacerbated, especially where this overshadows key stages of their development.</p> <p>The Bill also contains provisions to help speed up cases in which the accused indicates to the magistrates' court an intention to plead guilty. The Bill provides that, after consulting with the defence and prosecution the court can order the making of any inquiries or reports which might assist the Crown Court in reaching a sentencing decisions. These provisions will help to reduce the number of occasions victims / witnesses may be called upon to give evidence. It is expected this will reduce anxiety amongst victims and witnesses.</p>
Marital status	As per religious belief
Sexual orientation	As above
Men and Women generally	<p>In the most recent Court Prosecutions, Convictions and Out of Court disposals statistical publication, published in June 2020, it was reported that 87.7% (1,346 of 1,534) of defendants in the Crown Court during 2019 were male and 12% (184) were female. This</p>

information is not disaggregated by offence type however as the overwhelming majority of defendants in Crown Court cases are male it is assumed the cases affected by this policy will predominantly feature males as defendants.

Conviction rates for men and women in Crown Court cases in 2019 were 87.9% and 82.6% respectively.

Of those defendants convicted, 48.4% of men, and 21.1% of women received an immediate custodial sentence.

In relation to those defendants in custody, the Department published statistics on the Northern Ireland Prison Population for 2019/20 in September 2020. Key points from the data include that the proportion of prisoners on remand has increased steadily from 23.3% in 2014/15 (419) to 32.4% for 2019/20 (492). Over the same period the proportion of prisoners held after receiving a sentence with an immediate custodial element has decreased year on year from 76.5% (1,376) in 2014/15 to 67.2% (1,018) in 2019/20. In 2018/19 the number of prisoners held after receiving a sentence with an immediate custodial element was lower (1,006) than in 2019/20, albeit this still accounted for a greater proportion of the total number of individuals held in prison (69.5%) than for 2019/20.

In terms of reducing avoidable delay, defendants in Crown Court cases are overwhelmingly male, and are therefore proportionally are more likely to be on bail or remand in prison while their case proceeds to trial. Male defendants are also more likely to be convicted (87.9% to 82.6% for women), and if convicted more likely to receive a sentence with an immediate custodial element (48.4% compared to 21.1% for women).

	<p>There is no statistical evidence available to explain the differences between men and women regarding conviction rates or likelihood of receiving an immediate custodial sentence on conviction. Where a defendant has been convicted Judges will consider a range of factors in determining the most appropriate sentence. These include the nature of the offence; the culpability of the offender; the circumstances and characteristics of the offender; the impact on the victim and wider society; any pre-sentence report or other specific reports; and any aggravating or mitigating factors.</p> <p>Information regarding the gender of victims and witnesses is not routinely collected. Delay in criminal proceedings has a negative impact on victims and witnesses regardless of gender.</p> <p>It is envisaged the proposal will have a positive impact on all participants, regardless of gender.</p>
Disability	<p>Special measures exist in the criminal justice system to help vulnerable or intimidated victims and witnesses provide their best evidence to the court. These include, inter alia, giving evidence from behind a screen, or from a video link from a room outside of the court room, or the removing of cloaks and gowns by the judge and counsel to help make the setting more informal. Vulnerability can be defined by someone's age or by some types of disability.</p> <p>In terms of delay, victims, witnesses and defendants with a disability would all benefit from cases being concluded more quickly. The particular needs, experiences and priorities of a victim, witness or</p>

	<p>defendant can differ extensively depending on the nature of a disability. Court processes can appear particularly complex and formal.</p> <p>Court infrastructure may also be an issue that is more relevant to people with a disability. While there are certain minimum legal standards with which courthouses are required to provide services for people with disabilities, some of the courthouses are very old and there are limits to the adjustments that can be made. Therefore, keeping to a minimum the number of occasions, or the time a victim or witness has to spend within a courthouse may make the experience of being a participant in the criminal justice system more comfortable. By removing the use of oral evidence from victims and witnesses at committal, the Bill should in practice result in victims / witness only having to attend court to give evidence if a cases proceeds to trial in the Crown Court.</p>
Dependants	As per religious belief

Part 2

SCREENING QUESTIONS

Introduction

17. In making a decision as to whether or not there is a need to carry out an equality impact assessment, consider questions 1-4 listed below.
18. If the conclusion is **none** in respect of all of the Section 75 equality of opportunity and/or good relations categories, then the decision may to screen the policy out. If a policy is 'screened out' as having no relevance to equality of opportunity or good relations, give details of the reasons for the decision taken.
19. If the conclusion is **major** in respect of one or more of the Section 75 equality of opportunity and/or good relations categories, then consideration should be given to subjecting the policy to the equality impact assessment procedure.
20. If the conclusion is **minor** in respect of one or more of the Section 75 equality categories and/or good relations categories, then consideration should still be given to proceeding with an equality impact assessment, or to:
 - measures to mitigate the adverse impact; or
 - the introduction of an alternative policy to better promote equality of opportunity and/or good relations.

In favour of a 'major' impact

21. (a) The policy is significant in terms of its strategic importance;
- (b) Potential equality impacts are unknown, because, for example, there is insufficient data upon which to make an assessment or because they are complex, and it would be appropriate to conduct an equality impact assessment in order to better assess them;

- (c) Potential equality and/or good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- (d) Further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals and representative groups, for example in respect of multiple identities;
- (e) The policy is likely to be challenged by way of judicial review;
- (f) The policy is significant in terms of expenditure.

In favour of 'minor' impact

22. (a) The policy is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- (b) The policy, or certain proposals within it, are potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- (c) Any asymmetrical equality impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- (d) By amending the policy there are better opportunities to better promote equality of opportunity and/or good relations.

In favour of none

23. (a) The policy has no relevance to equality of opportunity or good relations.

(b) The policy is purely technical in nature and will have no bearing in terms of its likely impact on equality of opportunity or good relations for people within the equality and good relations categories.

24. Taking into account the evidence presented above, consider and comment on the likely impact on equality of opportunity and good relations for those affected by this policy, in any way, for each of the equality and good relations categories, by applying the screening questions given overleaf and indicate the level of impact on the group i.e. minor, major or none.

Screening questions

<p>1. What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? Minor/Major/None</p>		
Section 75 category	Details of policy impact	Level of impact? Minor/Major/None
Religious belief	The policy has, at this stage, no foreseeable adverse impact on equality of opportunity for this particular s75 group. However, the Department will, where appropriate, continue to review screening requirements.	None
Political opinion	As above	None
Racial group	As above	None
Age	As above	None
Marital status	As above	None
Sexual orientation	As above	None
Men and Women generally	As above	None
Disability	As above	None
Dependants	As above	None

2. Are there opportunities to better promote equality of opportunity for people within the Section 75 equalities categories?

Section 75 category	If Yes, provide details	If No, provide reasons
Religious belief		The Department has not identified opportunities to better promote equality of opportunity within this policy.
Political opinion		As above
Racial group		As above
Age		As above
Marital status		As above
Sexual orientation		As above
Men and Women generally		As above
Disability		As above
Dependants		As above

3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?

Minor/Major/None

Good relations category	Details of policy impact	Level of impact Minor/Major/None
Religious belief	None anticipated at this stage	None
Political opinion	As above	None
Racial group	As above	None

4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

Good relations category	If Yes, provide details	If No, provide reasons
Religious belief	None anticipated at this stage	None
Political opinion	As above	None
Racial group	As above	None

Additional considerations

Multiple identity

25. Generally speaking, people can fall into more than one Section 75 category. Taking this into consideration, are there any potential impacts of the policy/decision on people with multiple identities?

(For example; disabled minority ethnic people; disabled women; young Protestant men; and young lesbians, gay and bisexual people).

None anticipated at this stage. It is expected however that the impact of the proposal will be positive on all participants in cases included in the rollout.

26. Provide details of data on the impact of the policy on people with multiple identities. Specify relevant Section 75 categories concerned.

None anticipated at this stage. It is expected however that the impact of the proposal will be positive on all participants in cases included in the rollout.

Part 3

Screening decision

27. If the decision is not to conduct an equality impact assessment, please provide details of the reasons.

The policy is to be screened out at this point. Following consideration of the available evidence no likely adverse impacts on any section 75 grouping have been identified.

28. If the decision is not to conduct an equality impact assessment, consider if the policy should be mitigated or an alternative policy be introduced.

No adverse impact on any particular section 75 group has been identified at present. There is therefore no identified need to either, provide measures in mitigation, or an alternative policy proposal. This policy is one of a number of initiatives aimed at speeding up the justice system.

29. If the decision is to subject the policy to an equality impact assessment, please provide details of the reasons.

n/a

30. Further advice on equality impact assessment may be found in a separate Commission publication: Practical Guidance on Equality Impact Assessment.

Mitigation

31. When the public authority concludes that the likely impact is 'minor' and an equality impact assessment is not to be conducted, the public authority may consider mitigation to lessen the severity of any equality impact, or the introduction of an alternative policy to better promote equality of opportunity or good relations.
32. Can the policy/decision be amended or changed or an alternative policy introduced to better promote equality of opportunity and/or good relations?
33. If so, give the **reasons** to support your decision, together with the proposed changes/amendments or alternative policy.

n/a

Timetabling and prioritising

34. Factors to be considered in timetabling and prioritising policies for equality impact assessment.
35. If the policy has been '**screened in**' for equality impact assessment, then please answer the following questions to determine its priority for timetabling the equality impact assessment.
36. On a scale of 1-3, with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	n/a
Social need	n/a
Effect on people's daily lives	n/a
Relevance to a public authority's functions	n/a

37. Note: The Total Rating Score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the public authority in timetabling. Details of the Public Authority's Equality Impact Assessment Timetable should be included in the quarterly Screening Report.
38. Is the policy affected by timetables established by other relevant public authorities?
39. If yes, please provide details.

Part 4

Monitoring

40. Public authorities should consider the guidance contained in the Commission's Monitoring Guidance for Use by Public Authorities (July 2007).
41. The Commission recommends that where the policy has been amended or an alternative policy introduced, the public authority should monitor more broadly than for adverse impact (See Benefits, P.9-10, paras 2.13 – 2.20 of the Monitoring Guidance).
42. Effective monitoring will help the public authority identify any future adverse impact arising from the policy which may lead the public authority to conduct an equality impact assessment, as well as help with future planning and policy development.

Part 5

Approval and authorisation

Screened by:	Position/Job Title	Date
Official	Speeding up Justice Branch, Justice Performance Team	21 September 2020 Reviewed / revised: 10 February 2021
Approved by:		
Official	Grade 7 Speeding up Justice Branch, Justice Performance Team	21 September 2020 Reviewed 10 February 2021

Note: A copy of the Screening Template, for each policy screened should be 'signed off' and approved by a senior manager responsible for the policy, made easily accessible on the public authority's website as soon as possible following completion and made available on request.

The Screening exercise is now complete.

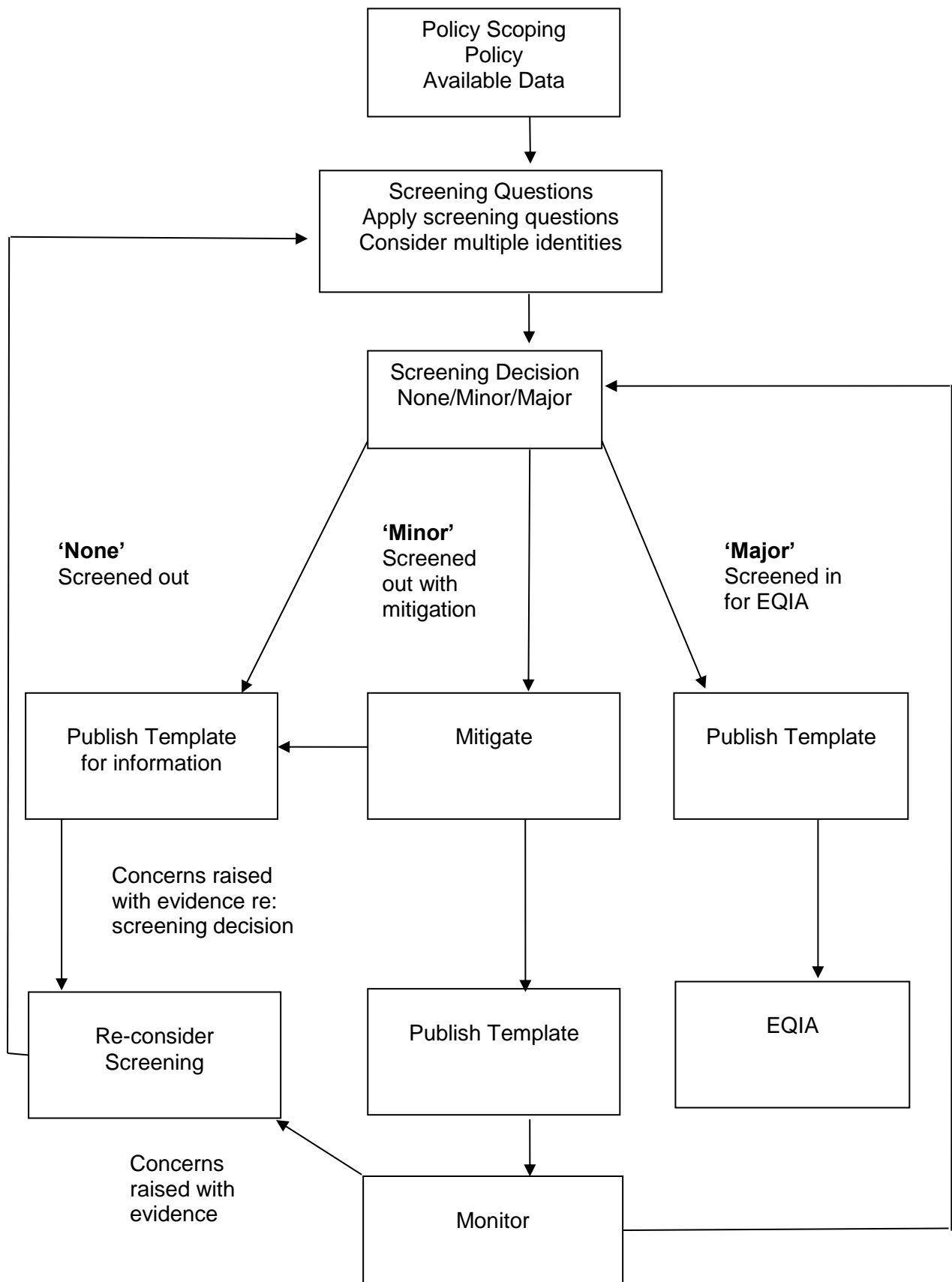
When you have completed the form please retain a record in your branch and send a copy for information to:-

Corporate Secretariat
Room 3.13B
Castle Buildings
Stormont Estate
BELFAST
BT4 3SG

Tel: 02890 522611

or e-mail to Equality Unit dojequality@dojni.x.gsi.gov.uk.

SCREENING FLOWCHART



MAIN GROUPS IDENTIFIED AS RELEVANT TO THE SECTION 75 CATEGORIES

Category	Main Groups
Religious Belief	Protestants; Catholics; people of other religious belief; people of no religious belief
Political Opinion	Unionists generally; Nationalists generally; members/supporters of any political party
Racial Group	White people; Chinese; Irish Travellers; Indians; Pakistanis; Bangladeshis; Black Africans; Afro Caribbean people; people of mixed ethnic group, other groups
Age	For most purposes, the main categories are: children under 18; people aged between 18 and 65. However the definition of age groups will need to be sensitive to the policy under consideration. For example, for some employment policies, children under 16 could be distinguished from people of working age
Marital/Civil Partnership Status	Married people; unmarried people; divorced or separated people; widowed people; civil partnerships
Sexual Orientation	Heterosexuals; bisexual people; gay men; lesbians
Men and Women generally	Men (including boys); women (including girls); transgender and trans-sexual people
Persons with a disability and persons without	Persons with a physical, sensory or learning disability as defined in Schedules 1 and 2 of the Disability Discrimination Act 1995.
Persons with dependants and persons without	Persons with primary responsibility for the care of a child; persons with personal responsibility for the care of a person with a disability; persons with primary responsibility for a dependent elderly person.

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. 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 cases should be transferred more quickly to the Crown Court.</p>
Article 3 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</p>

		<p>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 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 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</p>

		<p>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>
<p>Article 6 Right to a fair trial</p>	<p>Yes</p>	<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</p>

		call and cross-examine witnesses, are secured at the trial stage of the criminal proceedings
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	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. The Department considers that the right is engaged but that it is not interfered with or limited.
Article 9 Freedom of thought conscience and religion	Yes	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. The Department considers that the right is engaged but that it is not interfered with or limited.
Article 10 Freedom of expression	Yes	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. The Department considers that the right is engaged but that it is not interfered with or limited.
Article 11 Freedom of assembly and association	Yes	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. The Department considers that the right is engaged but that it is not interfered with or limited.
Article 12 Right to marry and found a family	Yes	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. The Department considers that the right is engaged but that it is not interfered with or limited.
Article 14 Prohibition of discrimination	Yes	The Department considers that the right is engaged but that it is not interfered with or limited. The policy engages Article 14 however the department considers that the policy does not interfere with or limit this right.

		<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 Right to 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	<p>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.</p> <p>The Department considers that the right is engaged but that it is not interfered with or limited.</p>

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.

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.