

FROM THE OFFICE OF THE JUSTICE MINISTER



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Northern Ireland Assembly
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Dear Christine,

JUSTICE BILL 2014: DELEGATED POWERS AND PLANNED AMENDMENTS

At its meeting on 18 June, the Committee asked officials to provide details of the amendments currently planned for the Justice Bill 2014 in order to enhance the Committee's public consultation on the Bill.

This letter sets out each of the amendments which the Department has, at this stage, decided to bring forward and provides details on the background to the amendments and their effects. Some of these amendments address issues raised by the Attorney General during the pre-introductory stages of the Bill while others put forward new policy proposals which we would like to advance in this Bill, given that they fit within its core themes.

Given the scope and complexity of the Justice Bill, it is likely that the Department will wish to bring forward further amendments at a later stage, and so this should not be taken as a definitive list of all potential Departmental amendments.

Finally, in view of the timing of this letter, I am also taking the opportunity to attach, for the attention of the Committee, the Delegated Powers Memorandum for the Justice Bill (**Annex A**).

Sharing Victim and Witness Information (Part 4)

At present, relevant information (contact details, as well as crime type for (i) below) about victims is shared between criminal justice organisations so that they can be provided with information on, and be offered timely access to, support services. The nature of this sharing is as set out below:

- (i) Between the Police and Victim Support NI (VSNI) to enable information to be given about the services that VSNI provides. The three key service areas are community services - practical and emotional support; witness support services at court, when a person is giving evidence; and compensation services. At present, fewer than 40% of victims 'opt in' to being notified about the services provided by VSNI. The Department considers that this is in part due to a limited understanding of the range of services that are available.
- (ii) Between the Public Prosecution Service and VSNI/NSPCC witness support services, so that witnesses (including victims) can be offered support when giving evidence – including pre-trial visits and separate waiting areas.
- (iii) Between the police and the post-conviction victim information release schemes, so that a victim can be provided with information on the

schemes and elect to receive information about the release of an offender and their management in the community.

The amendment proposed is intended to provide for a more effective mechanism through which victims could automatically be provided with timely information about the services available, that is: Victim Support Services; witness services at court; and access to information release schemes. Victims would not be obliged to avail of services; rather, the purpose of the proposed change is to ensure that they are provided with relevant information so that they can make an informed decision about the services on offer to them.

Subject to Legislative Counsel's views, the effect of this amendment is likely to be the insertion of a single new clause into the Bill, setting out that certain information would be shared between specified organisations for the purpose of informing victims and witnesses about available services.

A key theme of the Bill is to improve the quality of services provided to victims and to ensure that they have as much information as possible in their journey through the criminal justice system. The amendment would secure this and provide for the change at the earliest possible opportunity.

The matter was considered as part of your Inquiry into the services provided to victims and witnesses of crime. The Committee recommendation was that an "opt out" system on being approached by Victim Support NI and the Probation Board should be developed to replace the current "opt in" system. In response to this recommendation, we included an action in the five-year victim and witness strategy to explore the scope for better ways of sharing victims' information between the criminal justice organisations and also with voluntary sector partners. There was strong support for this action when we consulted publicly on the draft strategy and action plan. There have also been useful discussions with the Information

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Commissioner's Office and the Human Rights Commission on the detail of the proposed change.

Criminal Records (Part 5)

Publication of the Code of Practice

We are proposing an amendment to the power of the Department to publish the Code of Practice provided for in clause 39(2) of the Bill (which inserts a new subsection (4A) to section 113B of the 1997 Act). This new subsection provides for a statutory Code of Practice to which chief officers of police must have regard.

It had always been the intention that the Code of Practice would be published. The amendment would make it clear that the Code *must* be published and is being made at the suggestion of the Attorney General. Subject to Legislative Counsel's views, this is likely to be a very minor, technical change to the Bill. As it relates to the Code of Practice for which provision is being made in the Justice Bill, we think it is sensible to make this minor amendment at the same time.

Exchange of information between AccessNI and Disclosure and Barring Service for barring purposes

Section 16 of Schedule 8 of the Protection of Freedoms Act 2012 (POFA 2012) enables information obtained by the Disclosure and Barring Service (DBS) in connection with the exercise of any of its functions to be used by DBS in connection with the exercise of any of its other functions. This allows information obtained by those in the DBS who deal with disclosure (i.e. the issue of checks with criminal record and other information) to provide it to those in DBS who deal with the "barring" of individuals from working with vulnerable people.

It was always the Department's intention that AccessNI would take a similar power within the Justice Bill, as the DBS undertakes the barring function for Northern Ireland. AccessNI would pass to DBS details of any criminal or other information disclosed on individuals seeking an enhanced criminal record check to enable the DBS to determine whether that person should be barred. In addition, AccessNI would advise DBS if any person they were considering for a bar had ever applied to AccessNI for a check. When the Bill was being drafted, it was incorrectly thought

that there were already sufficient powers within Part V of the Police Act to exchange information with DBS and no additional powers were required. However, following further legal advice, it has become clear that a specific statutory power is required to allow AccessNI to share information with DBS which will be used for barring purposes.

Again, subject to Legislative Counsel's views, this is a minor amendment and should require no more than a single new clause. However, this is an important additional safeguard for vulnerable groups and should assist in ensuring that inappropriate persons are unable to get to work with such groups.

Review of criminal record certificates where convictions or disposals have not been filtered

The Attorney General supported the introduction of a scheme to filter certain old and minor convictions and other disposals such as cautions from Standard and Enhanced criminal record certificates. However, he has suggested that there should be provision for a person to ask for discretion to be exercised in their particular case and the Minister has agreed to the introduction of a review process to give effect to this.

The filtering scheme came into operation on 14 April 2014 following the approval of the necessary secondary legislation by the Assembly. The review mechanism will require primary legislation to amend the Police Act 1997.

Under what we propose, an amendment will be required to section 117 of the 1997 Act which covers disputes about the accuracy of certificates. Subject to Legislative Counsel's views, we think this will require a new clause in the Bill to provide for the introduction of the scheme and the drawing up of guidance by the Department setting out how it will operate.

The Bill already contains amendments to the 1997 Act designed to improve the efficiency and effectiveness of the criminal records disclosure system. We wish to

introduce the review mechanism as soon as possible and the Justice Bill is the first opportunity to do so. An additional benefit of the review mechanism is that it will strengthen the filtering regime, making it more compatible with Article 8 of the ECHR and reducing the scope for legal challenge to the current filtering system.

We plan to carry out a targeted consultation with key stakeholders on the draft guidance.

Duty of solicitor to advise client about early guilty plea (Part 8)

Clause 78 creates a statutory duty on a defence solicitor, when representing a person in connection with an investigation into an offence, to advise that person of the effect of Article 33 of the Criminal Justice (Northern Ireland) Order 1996 (which enables a court to give credit for an early guilty plea when sentencing the defendant) and to advise the client of the effect that a guilty plea might have on any sentence that might be passed on the person if he is found guilty of the offence.

Clause 78 (3), as currently drafted, requires the Law Society, with the concurrence of the Lord Chief Justice, to make regulations regarding the giving of this advice.

Our original intention was to confer a power on the Law Society to make regulations under clause 78 (3). Prior to Introduction of the Bill, however, the Attorney General advised the Department that such regulations would be otiose on the basis that the clause already sets out the nature of the duty (at clause 78 (2)) together with the sanction for failure to comply with the duty (at clause 78 (5)). He suggested, therefore, that clause 78 (3) would simply place a regulatory burden on the Law Society for no practical benefit.

On the basis of this advice, the Minister has indicated that he will amend the clause to omit subsection (3) at an appropriate stage of the Bill. Subject to Legislative Counsel's views, we think this would be a minor amendment; it would have no

substantive impact on the rest of the draft clause nor would it affect the policy intention behind the clause.

Defence Access to Premises (Part 8)

Clause 82(4)(a) (defence access to premises) of the Bill provides that a court shall not make an order permitting access to premises unless it is required in connection with the preparation of the person's defence or appeal.

The Attorney General has recommended an amendment to this provision so that a court could only grant an application for inspection of premises where it is necessary to ensure the fair trial rights of the defendant. His concern is that the threshold for an order allowing access to property is set too low as drafted, and he believes that the amendment he suggests will ensure proportionality and greater clarity in the use of the power.

Subject to Legislative Counsel's views, we anticipate that it will be a matter of substituting the wording the Attorney has suggested for the wording currently in clause 82(4)(a), and we agree that it is an appropriate amendment.

I trust that Committee members find this helpful. Officials are happy to provide further information or clarification should this be necessary.

TIM LOGAN
DALO

(Enc). Delegated Powers Memorandum for the Justice Bill