

Peter Gilleece
Director of Policy

Date: 10 October 2014

Mr Paul Givan MLA
Chair of the Justice Committee
Room 242
Parliament Buildings
Stormont
BT4 3ZZ

Dear Paul

JUSTICE BILL

Please find enclosed the Performance Committee's response to the Justice Committee's consultation on the Justice Bill. I hope that the comments will assist your Committee in its deliberations and I would be grateful if you would keep the Performance Committee informed as to progress.

Yours sincerely



PETER GILLEECE
Director of Policy

cc: Ms Christine Darrah
Clerk to the Committee for Justice

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PERFORMANCE COMMITTEE RESPONSE TO THE JUSTICE BILL

<u>PART OF BILL</u>	<u>OVERVIEW</u>	<u>PERFORMANCE COMMITTEE RESPONSE</u>
<p>1. Single Jurisdiction for County Courts and Magistrates' Courts</p>	<p>Part 1 of the Bill creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. This will allow greater flexibility in the distribution of court business by enabling cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so.</p>	<p>No specific comments.</p>
<p>2. Committal Proceedings</p>	<p>Part 2 of the Bill reforms the committal process to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries. DOJ has said that during consultation, this was identified by victims' groups as a key area for change to avoid victims having to undergo the ordeal of giving evidence twice.</p> <p>Part 2 will also speed up the process by providing for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences.</p>	<p>No specific comments.</p>

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<p>3. Prosecutorial Fines</p>	<p>Part 3 of the Bill creates new powers to enable public prosecutors to offer lower level adult offenders a financial penalty, up to a maximum of £200, as an alternative to prosecution of the case at court. Prosecutors will also be able to attach a financial compensation order to the fine in cases of criminal damage only.</p> <p>Prosecutorial fines are not applicable where the offender was below the age of 18 at the time of the offence.</p>	<p>Clause 17 sets out a list of information that prosecutors must include in a notice of offer for a prosecutorial fine. It requires the notice to indicate that if the offer is accepted, the alleged offender will be discharged from liability to be prosecuted for the offence. You may wish to consider adding to clause 17 and making it a requirement that the notice recommends that the offender seeks independent legal advice before accepting the offer. By admitting to the offence out of court, the offender might avoid receiving a ‘criminal conviction’ per se, but presumably the fact they have admitted the offence means it could still be used against them as evidence of previous history should they go on to reoffend. It could also potentially be disclosed through an enhanced criminal record check.</p> <p>Furthermore, the notice and the offer document itself should both clearly set out the consequences of failing to pay the fine once it has been accepted.</p> <p>In giving evidence to the Justice Committee in June 2014, DOJ officials advised that the fines will be used “for low-level summary offences by non-habitual offenders who admit responsibility in cases that would currently go to court and, most likely, result in a fine in any event.” However the Bill does not appear to limit use of the fines to first time or non-</p>
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habitual offenders. Presumably this is to allow prosecutors a degree of discretion as to the appropriate cases in which the fines could be offered, but it would be of concern to the Committee if repeat offenders were continually being offered a fine so **some degree of assurance as to how DOJ intends to safeguard against this would be welcome.**

General comment on this part

While developments in the youth sector (e.g. the introduction of Youth Engagement Clinics) are aimed at making out of court disposals more restorative and targeted at reducing re-offending, the same approach does not appear to be being taken in respect of adult offenders. Although prosecutorial fines for adults will assist with reducing delay in the criminal justice system, they do not appear to require prosecutors to consider the causes of offending behaviour or to make referrals to appropriate support services. This could potentially be a missed opportunity and **the Justice Committee may wish to consider whether there is scope to make the fines more restorative in nature.** Even if the view is reached that prosecutorial fines do not provide the correct vehicle for offering a restorative alternative to prosecution, it is an issue that the Justice Committee may wish to discuss during its deliberations on the Justice Bill. The Board has held discussions with relevant agencies (including DOJ) in relation to the Hull triage

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		<p>model, which although developed initially for young offenders, was extended to include female adult offenders with reported positive results as regards reoffending rates.</p>
<p>4. Victim Charter and Witness Charter</p>	<p>Part 4 of the Bill places a duty on the DOJ to issue both a Victim Charter and a Witness Charter setting out the services, standards of services and treatment of victims and witnesses by specified criminal justice agencies. It requires criminal justice agencies to have regard to the Charter in carrying out their functions.</p> <p>A “victim” is defined as being an individual who is a victim of criminal conduct (provided they are not under investigation for, or have not been charged with, an offence arising from the criminal conduct concerned). It is immaterial that no person has been charged with or convicted of an offence in respect of the conduct. If (whether as a result of the criminal conduct concerned or not) (a) the physical or mental state of a victim is such that it is unreasonable to expect the victim to act on his or her own behalf, or (b) a victim has died, references in the Bill to the victim are to be read as references to a member of the family of the victim.</p> <p>If a criminal justice agency fails to comply with the Victim or Witness Charter, the failure does not of itself make the agency liable to criminal or civil</p>	<p>The Committee welcomes the introduction of Victim and Witness Charters.</p> <p>Part 4 of the Bill simply requires the DOJ to ‘issue’ the Victim and Witness Charters. While the Justice Bill would be too high level a document to specify the communication strategy for ensuring that the existence and contents of the Charter are made known to, and can be understood by, Victims and Witnesses, the Bill and/or the Charter itself could perhaps include a clause requiring the relevant criminal justice agencies (or at least the Court Service) to visibly display a copy of each Charter at their publically accessible offices and on their websites. By way of example, the PACE Codes of Practice contain a requirement that the Code is readily available for consultation by police officers, police staff, detained persons and members of the public.</p> <p>When the Victim Charter is put in place will it be applicable to all persons (or their families if applicable) who have ever been a victim of criminal conduct, regardless of when that criminal conduct</p>

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	<p>proceedings. But the Charter is admissible in evidence in criminal or civil proceedings and a court may take into account a failure to comply with the Charter in determining a question in the proceedings.</p>	<p>occurred? Or will it only apply to victims of criminal conduct occurring from the date the Charter is put in place? Clause 29, which defines a 'victim' for the purposes of the Victim Charter, could make this explicitly clear.</p>
<p>4. Victim Personal Statements</p>	<p>Part 4 also gives victims a statutory entitlement to be afforded the opportunity to make a written 'victim personal statement' which sets out the way in which, and degree to which, the offence or alleged offence has affected and continues to affect, the victim. A family member can make the statement if the victim is deceased or is unable to give a statement due to their physical or mental state. If the victim is under the age of 18, a parent can make the statement in addition to the young person.</p> <p>DOJ will be empowered to make Regulations which set out the manner in which the statement will be used and taken into account by the court when it is determining a sentence for the offence in question.</p>	<p>The introduction of victim personal statements on a statutory footing is welcomed by the Committee and provides the opportunity to consider the types of cases in which the statements could be better utilised than they perhaps have been to date. For example, hate crime cases.</p> <p>The disconnect between the number of hate crimes recorded by the police and the number of enhanced sentences passed by the court under the Criminal Justice (No.2) (Northern Ireland) Order 2004 is in part attributable to the fact that the police record hate crime using a perception based test, whereas an enhanced sentence can only be passed if the hate motivation of the crime has been proved beyond all reasonable doubt.</p> <p>If victims of hate crime are able to express through their personal statements the impact that the perceived hate element of the offence has had upon them, and the court takes this into account when passing a sentence, it would mean that the victim might be left with a better sense that</p>

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		<p>justice has been served, even if the evidential burden of the 2004 Order cannot be overcome. For this to occur, victims would need support and assistance with preparing the statement and judges would need to explicitly state when passing the sentence that they have taken account of the impact on the victim of the perceived hate motivation.</p>
<p>4. Sharing Victim and Witness Information (DOJ amendment)</p>	<p>DOJ proposes to add a clause setting out that certain information would be shared between specified organisations for the purpose of informing victims and witnesses about available services (i.e. Victim Support Services; Witness Services at Court; and access to information release schemes).</p>	<p>The Committee would need to see the text of the proposed amendment in order to be able to comment or express a view upon it. For example, it is not clear from the letter provided by the DOJ the stage at which victims could 'opt-out' from their information being shared. It is not clear what the 'certain information' is and who the 'specified organisations' will be. However, the Committee is broadly supportive of steps being taken to ensure that victims and witnesses are equipped with relevant information in order to make an informed decision about the services on offer to them.</p>
<p>5. Criminal Records</p>	<p>Part 5 modernises arrangements for the disclosure of criminal records and allows for (amongst other things):</p> <ul style="list-style-type: none"> • Portable disclosures - currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate is required as the information on it is only valid when issued. Updating arrangements will allow an 	<p>The Performance Committee recently discussed the disclosure of criminal records with ACC Mark Hamilton, in particular the impact on young people's employability following disclosure of criminal records and other police information relating to low-level offending. The Committee is aware that the Justice Minister has rejected the recommendation in the Youth Justice Review whereby out of court</p>

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	<p>individual to use their certificate for a variety of positions (i.e. to make it portable), and an online facility will be available to enable employers to establish whether the information on the existing certificate remains valid and up to date or whether a new certificate should be requested.</p> <ul style="list-style-type: none"> • Additional safeguards for enhanced criminal record certificates, e.g: <ul style="list-style-type: none"> ○ When police information is sought as part of an enhanced disclosure application, the application must be sent to the ‘relevant chief officer’ (currently it is just the ‘relevant police service’ that the application must be sent to); ○ The chief officer determining whether information should be included in the certificate must “reasonably believe the information to be relevant” (currently they must just be satisfied that the information “might be relevant”); ○ Chief officers must have regard to a statutory Code of Practice; and ○ A person may apply to the Independent Monitor to determine whether information provided by the police is relevant or ought to 	<p>diversionary disposals would not be subject to employer disclosure and that he instead opted for the recommendations made by Sunita Mason and recently introduced new filtering arrangements.¹ This means that diversionary disposals will continue to be disclosed to employers on standard and enhanced Access NI checks, albeit for a limited period of time in most cases. Furthermore any information held on police systems can potentially be disclosed as ‘police information’ as part of an enhanced check. Such police information might include conviction information (even if filtered), pending proceedings, unsuccessful prosecutions, intelligence, diversionary disposals (even if filtered), discretionary disposals and any other information that may have a bearing on a vulnerable group.</p> <p>Given that the new filtering arrangements do not apply to the disclosure of police information on an enhanced certificate, the police are instead required to exercise professional judgement when determining what information to disclose. That judgement should be exercised within clearly defined parameters. Although the Justice Bill does propose to tighten</p>
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¹ Filtering came into effect in April 2014 and means that some minor convictions will no longer be automatically disclosed on standard and enhanced Access NI checks after a certain period of time has passed (for young people, the time period is 5 ½ years). Out of court diversionary disposals for certain offences will also be filtered after a certain period of time has passed (for young people, the time period is 1 year for informed warnings and 2 years for cautions and diversionary youth conferences). However even if information has been filtered, a record of it will remain on police systems and thus it may still be disclosed as ‘police information’ in the ‘other’ section of an enhanced certificate.

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	<p>be included on an enhanced certificate. DOJ proposes making 3 amendments to Part 5:</p> <ol style="list-style-type: none"> (1) An amendment to make it clear that the DOJ <i>must</i> publish a Code of Practice to which chief officers must have regard. (2) An amendment to empower Access NI to share information with the Disclosure and Barring Service (DBS) to enable the DBS to determine whether a person should be barred from working with vulnerable people. (3) A filtering scheme came into operation in April 2014 whereby certain old and minor convictions and other disposals (e.g. cautions) are filtered out of Standard and Enhanced certificates. DOJ proposes to add a clause to the Justice Bill which will introduce a review mechanism for criminal record certificates where convictions or disposals have not been filtered and which will require DOJ to introduce guidance setting out how it will operate. DOJ intends to carry out a targeted consultation with key stakeholder on the draft guidance. 	<p>up the relevancy test contained within the Police Act 1997, additional wording could perhaps be inserted into the 1997 Act to expressly require that any disclosure must be in pursuit of a legitimate aim (as set out in Article 8(2) ECHR), necessary and proportionate.²</p> <p>The Committee supports the introduction of a Code of Practice for police officers and asks that the DOJ consults with PSNI and the Board when developing this Code.</p> <p>Guidance on the new filtering rules and the review mechanism would also be welcomed by the Committee. The Committee would be grateful if the DOJ would include the Board in the targeted consultation it intends to carry out with key stakeholder on the draft guidance. There would appear to be a lack of public knowledge as to the extent of information that might be disclosed during a criminal record check, in particular the disclosure of non-conviction information, therefore it would be important that the guidance is publically accessible and easily understood by a lay reader. It would be fair to assume that most</p>
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² Although it would seem that ACC Mark Hamilton (PSNI's authorising officer for enhanced disclosure checks) already applies such a test before releasing information, any successors to this role might not apply as rigorous an approach. While such requirements could be built in to a Code of Practice, why not take the opportunity to enshrine them in primary legislation? (for an example of primary legislation which expressly incorporates requirements of necessity and proportionality, see RIPA) 249840



		members of the public do not routinely browse the DOJ's website, therefore targeted publicity of the guidance, for example aimed at the legal profession, community/youth workers etc. should also be considered.
6. Live Links in Criminal Proceedings	Part 6 expands provision for the use of live video link ('live link') facilities in courts. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses.	No specific comments.
7. Violent Offences Prevention Orders	Part 7 of the Bill creates a new tool – the Violent Offences Prevention Order (VOPO) - to assist relevant criminal justice agencies in the management of risk from violent offending. A VOPO can contain such prohibitions or requirements as the court making the order considers necessary in order to protect the public (or any particular member of the public) from the risk of serious violent harm caused by the offender. Persons subject to a VOPO will also be subject to notification requirements and must advise the police of any changes to their personal information, home address etc. A VOPO can last for between 2 and 5 years and can be renewed or discharged by the court. VOPOs can be issued by the court upon conviction for a specified offence, or it can	The Committee supports the introduction of VOPOs, particularly as they may aid the police in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes. The Committee hopes that this would allow the PSNI to be more pro-active in situations where the victim is too fearful to apply to court for Non-Molestation Orders as it would not necessitate the victim's cooperation.

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	<p>be issued by the court upon an application by the Chief Constable in respect of a qualifying person who has, since being convicted of a specified offence, acted in such a way as to give the Chief reasonable cause to believe that it is necessary for an order to be made. The police may search a person's home for the purpose of risk assessment provided specified requirements are met and provided the court has issued a warrant to enable them to do so. The making/refusal/renewal of a VOPO can be appealed through the court system. Failure to comply with a VOPO or notification requirements is an offence.</p> <p>Note that in developing these proposals, DOJ has worked closely with PSNI and the Probation Board as they will be the agencies primarily responsible for delivery of the new orders. Both organisations have expressed a strong desire for VOPOs to be introduced to Northern Ireland as soon as possible. They have pointed to a gap in the provision for applying the public protection arrangements in an effective way to violent offenders, as compared with sex offenders which is due to the availability of Sexual Offences Prevention Orders (SOPOs), which is considered to be a valuable tool in the risk management of sex offenders.</p>	
<p>8. Jury Service</p>	<p>Clause 72 abolishes the upper the age limit for jury service, making everyone over 18 qualified for jury</p>	<p>No specific comments.</p>

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	service (at present it is only persons aged 18 – 70 who are eligible). Persons over the age of 70 have an automatic right to be excused should they wish.	
8. Early Guilty Pleas	Two statutory provisions are introduced to encourage the use of earlier guilty pleas in Northern Ireland. The provisions will provide legislative support to a (non-legislative) scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and the Crown Court. The provisions will: (i) require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity and; (ii) place a duty on a defence solicitor to advise a client about the benefits of an early guilty plea.	No specific comments.
8. Avoiding Delay	The Justice Bill will enable the DOJ to make Regulations for statutory case management (i.e. the Regulations will impose duties on the prosecution, defence and the court, which set out what must be completed prior to the commencement of court stages). DOJ will also be empowered to make Regulations which impose a general duty to reach a just outcome as swiftly as possible on anyone exercising a function in relation to criminal proceedings.	The Committee broadly welcomes the steps being taken to reduce delay and better manage cases in the criminal justice system given the effect delay can have on the efficiency and effectiveness of the PSNI. The Committee would however require sight of the DOJ Regulations before being in a position to endorse these.
8. Public Prosecutor's	Prosecutors will be empowered to issue a summons to an accused person without first having to get a lay	No specific comments.

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Summons	magistrate to sign the summons.	
8. Defence Access to Premises	Courts will be given a power, in criminal proceedings, to order access to specified premises for the defendant. The Justice Bill as originally drafted directs that an order will only be made where appropriate, and “where it is required in connection with the preparation of the defendant’s defence or appeal.” DOJ proposes amending this so that the court could grant an order allowing access to premises where it is “necessary to ensure the fair trial rights of the defendant.”	No specific comments.
8. Court Security Officers	Court Security Officer’s powers to search, exclude, remove or restrain an individual is extended to include the grounds on which the court buildings sit.	No specific comments.
8. Youth Justice	Section 53(3) of the Justice (NI) Act 2002 will be amended to include a requirement that all persons and bodies exercising functions in relation to the youth justice system have the best interests of children as a primary consideration.	The Committee supports the incorporation of the UNCRC best interests principle into the 2002 Act. With regard to the criminal justice system generally, is there scope to introduce a similar principle whereby the best interests of vulnerable groups, e.g. older people, will be a primary consideration?
Proposed Amendment by Mr Jim Wells MLA	Mr Wells has proposed an amendment to restrict lawful abortions to NHS premises except in cases of urgency when access to NHS premises is not possible and where no fee is paid.	No specific comments.

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<p>Proposed Amendment to the Coroners Act (NI) 1959</p>	<p>The proposed amendment would confer upon the Attorney General a power to obtain information. This proposed power, and a corresponding duty to provide information, would be specifically limited to persons who have provided health or social care to a deceased person.</p>	<p>The Performance Committee has already corresponded with the Justice Committee in relation to the Attorney General's proposal and has sought reassurance that should consideration be given to extending his proposal beyond the scope of deaths that occur in a health and social care setting, that the Performance Committee is notified in order that it can consider the policing implications.</p>
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