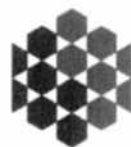


FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

Justice

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Our ref SUB/1368/2015

Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Parliament Buildings
Stormont Estate
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30 November 2015

Dear Christine,

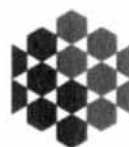
**JUSTICE (NO. 2) BILL: RETURN OF TABLES OF SUMMARY EVIDENCE
AND PROPOSED DEPARTMENTAL AMENDMENTS**

Thank you for your correspondence of 9 and 10 November, in which you forwarded tables of summary evidence from the Committee in respect of Part 1 (Fines and other financial penalties), Part 3 (Miscellaneous) and Part 4 (General) of the Justice (No. 2) Bill and asked for comments by the Department on the issues raised.

I now return the Departmental response to the issues raised in the tables. I hope this is helpful.

Departmental officials will, of course, be happy to discuss and provide any further clarification that the Committee requires during oral evidence at the meeting scheduled for 3 December. The following officials will be in attendance:

- Karen Pearson (Deputy Director, Criminal Justice Division);
- Pamela Reid (Criminal Justice Division);
- Angela Bell (Criminal Justice Division); and
- Graham Walker (Justice (No. 2) Bill Manager).



Departmental Amendments to Part 1 of the Bill

I also wish to offer the Committee the text of a number of amendments (and associated consequential adjustments) that the Department proposes to bring forward to Part 1 of the Bill.

You will recall my letter of 29 June provided the Committee with some additional information on proposed amendments to the Bill (and these were also outlined during the Department's briefing to the Committee on the principles of the Bill on 23 June). My letter set out the detail of proposed amendments for a police power of arrest in relation to Default Hearings and provisions to improve information access and sharing in the fine collection process. The text of these amendments is at **Annexes A and B** to this letter.

My letter also outlined the Minister's intention to bring forward an amendment to the arrangements for making ancillary provision (currently clause 45 of the Bill). In recognition of the Committee's concerns around what was clause 86 in the previous Justice Bill (now the Justice Act (Northern Ireland) 2015 ("the 2015 Act")), it is proposed to omit clause 45 and to create power to make ancillary provisions under much more restrictive circumstances, limited to Part 1 of the Bill only.

This amendment, together with some additional consequential adjustments, follows the model developed with the Committee's assistance and accepted at Further Consideration Stage of the 2015 Act. The text of these changes is at **Annex C**.

The Department also proposes to bring forward a small number of additional amendments to further improve the financial penalty collection and enforcement provisions contained in Part 1 of the Bill. The first of these proposes two amendments to the vehicle seizure clauses of the Bill. As outlined in my letter to the Committee of 4 November, the amendments would specify the issues that the court should take into account before making a vehicle seizure order on the face of the Bill (addressing issues raised by the Northern Ireland Human Rights Commission and the Examiner of Statutory Rules) and provide that a vehicle seizure order should only be made if the value of the vehicle, if sold, would discharge the sum owed *including* the likely charges and costs of the sale. The text of these amendments is at **Annex D**.

Two other amendments are proposed to create a power for the recovery of the costs of default hearings (again outlined in my letter of 4 November), and to ensure that



Prosecutorial Fines can be treated in the same way as the fixed penalties and penalty notices already included in Schedule 2 of Bill.

This reflects the policy intent for the enforcement of Prosecutorial Fines from the outset. This matter could not, however, be included in the Bill at Introduction as the Justice Act (Northern Ireland) 2015, which creates the disposal, had not received Royal Assent at that time.

The text of these amendments is at **Annexes E** and **F** respectively.

Finally, in respect of Part 1 of the Bill, a series of minor and technical amendments are proposed to correct and improve the drafting of the Bill.

These amendments, the text of which is at **Annex G**, include amendments to Clause 24 and Schedule 2 to address omissions from the Bill at Introduction to ensure that a Supervised Activity Order cannot be considered as an option in default of a confiscation order (given that under Clause 3(2), a confiscation order is outwith the proposed new collection and enforcement arrangements) and to ensure that a warrant of commitment for default under the Bill is treated the same as a similar warrant under the Magistrates' Courts (Northern Ireland) Order 1981.

New Policy amendments

In addition to the amendments to Part 1 described above, the Department is also proposing to bring forward two additional new policy additions to the Bill.

The first relates to an amendment to close a lacuna in the direct committal for trial provisions in Section 9 of the Justice Act (Northern Ireland) 2015 ("the 2015 Act").

Section 9(3)(b) and (c) of the 2015 Act provides that the direct committal arrangements do not apply where the court is to proceed summarily with an offence under Article 45 of the Magistrates' Courts (NI) 1981 or under Article 17 of the Criminal Justice (Children) (NI) Order 1998.

DSO advice suggests that section 9 of the 2015 Act may not be sufficiently explicit to enable offences which are caught by Article 45 of the 1981 Order and Article 17 of the 1998 Order to attract the direct committal arrangements where the prosecution decides to proceed on indictment.

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Our policy intention was that these cases should be capable of being directly transferred where it is decided to proceed on indictment, and the Minister believes that there is merit in amending section 9 of the 2015 Act to put this matter beyond doubt. The text of the amendment is at **Annex H**.

Finally, an amendment is proposed at **Annex I** to create a fee structure for the Court Funds Office ("CFO"). This amendment is in response to a Northern Ireland Audit Office (NIAO) recommendation that the Northern Ireland Courts and Tribunal Service (NICTS) "should examine the current arrangements for recovering the CFO's costs to ensure that they are fair and equitable" and a recommendation by the Public Accounts Committee (PAC) that the "CFO establish fair and equitable arrangements for recovering its costs from clients".

Officials from NICTS are appearing before the Committee on 3 December to give oral evidence on the outcome and way forward in response to the "Proposed Fee Structure for Court Funds Office" consultation and will be happy to speak to this amendment at that time.

I trust this is helpful, and please do not hesitate to get in touch if you have any queries.



TIM LOGAN
DALO

Enc. Annexes A – I

Table: Written Evidence Part 1

Table: Written Evidence Parts 3 and 4

Power of arrest for Default Hearings

New Clause

After **Clause 9** insert—

“Power to issue arrest warrant where debtor fails to attend hearing referral of case

- 9A.**—(1) This section applies where, in the case of a debtor who is an individual—
- (a) a summons is issued under section 6(10) or 8(3), but
 - (b) the debtor does not appear before court as required by the summons.
- (2) The court before which the debtor was required to appear may issue a warrant for the debtor’s arrest if—
- (a) it is not satisfied that the summons was served on the debtor or that the debtor is evading service, but
 - (b) it is satisfied that the debtor is aware of the liability to pay the sum due and of the possible consequences of defaulting on the payment, and
 - (c) it is considering the possibility of issuing a warrant to commit the debtor to prison under section 9(1)(i).
- (3) On issuing a warrant under this section, the court must endorse the warrant for bail so as to direct that, once arrested, the debtor must be released on entering into the recognizance specified in the endorsement.
- (4) A warrant under this section may be executed only by a constable.
- (5) A warrant under this section is not to be regarded for the purposes of Article 19(1)(a)(i) of the Police and Criminal Evidence (Northern Ireland) Order 1989 as a warrant issued in connection with or arising out of criminal proceedings.”

New Clause

After **Clause 9** insert—

“Arrest under warrant under section 9A

- 9B.**—(1) This section applies where a debtor is arrested in reliance on a warrant issued under section 9A.
- (2) If the debtor enters into the recognizance specified in the endorsement to the warrant, it is not necessary for the debtor to be taken to a police station; and if the debtor is taken to a police station without having entered into the recognizance, he or she must be released from custody on entering into it.

(3) If the debtor enters into the recognizance, the hearing of the debtor's case under section 9 on the referral under section 6 or 8 is to take place at the time and place specified in accordance with provision made in the recognizance.

(4) If the debtor does not enter into the recognizance, the debtor must as soon as is practicable be brought before either a magistrates' court or the Crown Court, whichever is next sitting; and, pending that, the debtor may be kept in custody at a police station.

(5) If the debtor is brought before a magistrates' court and it is the responsible court in the debtor's case, it—

(a) must at that sitting hear the debtor's case under section 9 on the referral under section 6 or 8, or

(b) if it not possible for the court to do so at that sitting, must adjourn the hearing on the referral to such time and place as it specifies and must remand the debtor in accordance with section 9C.

(6) If the debtor is brought before a magistrates' court but the Crown Court is the responsible court in the debtor's case, it must commit the debtor to the Crown Court in accordance with section 9C.

(7) If the debtor is brought before the Crown Court and it is the responsible court in the debtor's case, it—

(a) must at that sitting hear the debtor's case under section 9 on the referral under section 6 or 8, or

(b) if it not possible for the court to do so at that sitting, must adjourn the hearing on the referral to such time and place as it specifies and must remand the debtor in accordance with section 9C.

(8) If the debtor is brought before the Crown Court but it is not the responsible court in the debtor's case, it must remit the debtor's case to the magistrates' court which is the responsible court and must remand the debtor in accordance with section 9C.

(9) Where a debtor has entered into the recognizance, the outstanding amount may, before the hearing on the referral of the debtor's case, be paid to the police or the court; and on the payment being made, the warrant ceases to have effect.

(10) Where the debtor has not entered into the recognizance, the outstanding amount may, before the debtor is brought before the court under this section, be paid to the police or the court; and on the payment being made, the warrant ceases to have effect.

(11) Where the debtor has been dealt with as mentioned in subsections (5) to (8) pending the hearing on the referral of the debtor's case, the outstanding amount may, before the hearing on the referral, be paid to the court.

(12) The police, on receiving a payment under subsection (9) or (10), must send it to the court.

(13) If, at the time of the commencement of this section, Part 1 of the Justice Act (Northern Ireland) 2015 (single jurisdiction for county courts and magistrates' courts) has yet to come into force, this section, pending the commencement of that Part, has effect as if after subsection (5) there were inserted—

“(5A) If the debtor is brought before a magistrates’ court but another magistrates’ court is the responsible court in the debtor’s case, it must adjourn the hearing on the referral to that other court at such time and place as it specifies and must remand the debtor in accordance with section 9C.””.

New Clause

After **Clause 9** insert—

“Remand or committal under section 9B

9C.—(1) For the purposes of the remand or committal of a debtor under section 9B(5) to (8), the court must either—

(a) remand or commit the debtor in custody, by committing the debtor to custody to be brought before the responsible court at the end of the period specified by the court (but see also subsection (7)), or

(b) remand or commit the debtor on bail, by remanding the debtor on bail subject to such conditions as the court may specify for the debtor’s subsequent appearance before the responsible court.

(2) A reference in this section to being remanded or committed in custody is to be read in accordance with subsection (1)(a); and a reference in this section to being remanded or committed on bail is to be read in accordance with subsection (1)(b).

(3) If the debtor is remanded or committed in custody, the court may give its consent to the debtor being remanded or committed on bail.

(4) The period for which the debtor may be remanded or committed in custody must not exceed—

(a) in a case where the debtor consents, 28 days;

(b) in any other case, 8 days.

(5) The period for which the debtor may be remanded or committed on bail must not exceed 28 days.

(6) If the debtor is aged under 18, he or she may not be remanded or committed in custody.

(7) If the debtor is aged 21 or over, the remand or committal of the debtor in custody may, on an application made by a police officer not below the rank of inspector, be made by—

(a) committing the debtor to detention at a police station, or

(b) committing the debtor to the custody of a constable (otherwise than at a police station).

(8) The period for which the debtor may be committed under subsection (7)(a) must not exceed 3 days beginning with the day following that on which the debtor was committed.

(9) The debtor may not be committed to detention at a police station under subsection (7)(a) unless there is a need for him or her to be so detained for the purposes of inquiries into a criminal offence; and if the debtor is committed to such detention—

(a) the debtor must, as soon as that need ceases, be brought back before the court;

(b) the debtor is to be treated as a person in police detention to whom the duties under Article 40 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (responsibilities in relation to persons detained) relate, and

(c) the detention of the debtor is to be subject to periodic review at the times set out in Article 41 of that Order.

(10) The debtor may not be committed to the custody of a police officer under subsection (7)(b) unless there is a need for him or her to be kept in such custody for the purposes of inquiries into a criminal offence; and if the debtor is committed to such custody, he or she must, as soon as that need ceases, be brought back before the court.

(11) The court may order the debtor to be brought before it at any time before the expiration of the period for which the person has been remanded or committed.

(12) Once the debtor has been remanded or committed pending the hearing on the referral of the debtor's case, the outstanding amount may, before the hearing on the referral, be paid to the court."

Clause 7, Page 6, Line 34

At end insert—

“(3) The collection officer's report is admissible in proceedings before a court as evidence of the facts stated in it; and a court may, for example, take the report into account in deciding whether to issue a warrant under section 9A.”

Clause 9, Page 8, Line 20

At end insert—

“(8A) Where the court issues a warrant of committal under subsection (1)(i), the length of the period of committal as pronounced by the court is to be reduced by the length of any period during which the debtor has, in the case to which the hearing under this section relates, been remanded or committed in custody under section 9C (but not under subsection (7) of that section).”

Clause 18, Page 14, Line 14

After “require” insert “(even though the collection officer's report is, by virtue of section 7(3), admissible at the hearing)”.

Information access and sharing

New Clause

After **Clause 12** insert—

“Disclosure of information

12A.—(1) The Department for Social Development, or a person providing services to that Department, may disclose social security information to a court or a collection officer for the purpose of—

- (a) facilitating a decision by the court or officer whether or not to make an application for deduction from benefits, or
 - (b) facilitating the making of the application by the court or officer.
- (2) In subsection (1), “social security information” means—
- (a) information which is held by the Department for the purposes of functions relating to social security,
 - (b) information which is held by a person providing services to the Department in connection with the provision of those services, or
 - (c) information which is held with information of the description given in paragraph (a) or (b).
- (3) The reference in subsection (2)(a) to functions relating to social security includes a reference to functions relating to—
- (a) statutory payments as defined in section 4C(11) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
 - (b) maternity allowance under section 35 or 35B of that Act.
- (4) A person to whom information is disclosed under this section commits an offence if the person—
- (a) discloses the information to another person, or
 - (b) uses the information for a purpose other than a purpose referred to in subsection (1).
- (5) It is not an offence under subsection (4)—
- (a) to disclose any information in accordance with a statutory provision or with an order of a court or of a tribunal established by or under a statutory provision or for the purposes of any proceedings before a court,

- (b) to disclose or use any information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it, or
 - (c) to disclose or use any information which has previously been lawfully disclosed to the public.
- (6) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed that the disclosure or use was lawful.
- (7) A person guilty of an offence under subsection (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.
- (8) Nothing in this section authorises the making of a disclosure which contravenes the Data Protection Act 1988.
- (9) In this section, “information” means information held in any form.”

Clause 1, Page 2, Line 1

Leave out subsection (3).

Clause 22, Page 16, Line 27

At end insert—

““statutory provision” has the same meaning as in the Interpretation Act (Northern Ireland) 1954;”.

Ancillary provisions (Clause 45)

Clause 23, Page 17, Line 9

At end insert—

“(2) The Department of Justice may by order make such consequential, supplementary or incidental provision as it considers appropriate in consequence of, or for giving full effect to, this Chapter.

(3) An order under subsection (2) may amend, repeal, revoke or otherwise modify any statutory provision.”

Clause 45, Page 32, Line 27

Leave out Clause 45.

Clause 46, Page 33, Line 9

At end insert—

“(aa) an order under section 23(2) containing provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation;”.

Clause 46, Page 33, Line 11

Leave out paragraph (c).

Clause 47, Page 33, Line 19

Before “Part 3” insert “Section 23(2) and (3),”.

Vehicle seizure

Clause 6, Page 5, Line 39

Leave out “is sufficient to discharge the outstanding amount” and insert “(if sold) would be sufficient to discharge the outstanding amount and the amount of any charges likely to be imposed and costs likely to be incurred in connection with executing a vehicle seizure order in relation to the vehicle”.

Clause 18, Page 14, Line 14

At end insert—

“(3A) Before making a vehicle seizure order, the responsible court must, in satisfying itself that the order would be justified, reasonable and proportionate in all the circumstances of the case, have particular regard to the likely effect of the order on the debtor’s ability to earn a living.”

Clause 18, Page 14, Line 36

Leave out paragraph (b).

Recovery of the cost of default hearings

New Clause

After **Clause 9** insert—

“Costs relating to referral of debtor’s case

9D.—(1) The costs of the hearing of a debtor’s case under section 9 (including any costs incurred in connection with any matter preliminary or incidental to the hearing, but not including any costs incurred by the debtor) are to be defrayed in the first instance by the Department of Justice.

(2) The costs to be defrayed under subsection (1) are to be such rates or such amounts as may be generally or specifically approved by the Department of Finance and Personnel.

(3) The court hearing the debtor’s case under section 9 may, in addition to any other order which it may make at the hearing, order the debtor to pay the whole or any part of the costs referred to in subsection (1); but, if the debtor is an individual aged under 18, the amount of any costs ordered under this subsection may not exceed the outstanding amount.

(4) The payment of an amount imposed by an order under subsection (3) is enforceable in the same manner as a fine or other sum adjudged to be paid by or imposed on a conviction of the court (and this Chapter applies in relation to that amount accordingly).

(5) The costs of any proceedings under section 9B involving the debtor are to be regarded for the purposes of this section as costs of the hearing of the debtor’s case under section 9.”

Prosecutorial Fines

Schedule 2, Page 40, Line 40

At end insert—

“Justice Act (Northern Ireland) 2015

6A.—(1) In section 24 (prosecutorial fines: registration of sum payable in default), in subsection (2)(a), for “21 days” substitute “28 days”.

(2) After section 24(3) insert—

“(3A) The fines clerk must refer the case to a district judge (magistrates’ courts) for the judge to consider whether to make a collection order; and the order may be made without a court hearing.

(3B) Where a collection order is made in that case, the date specified in the order as the date by which the sum due must be paid must, unless the court directs otherwise, be the same as the date specified in the notice of registration under subsection (2)(a).”

(3) In section 25 (challenge to notice), in subsection (7), after “enforcing payment of that sum” insert “(including the making of a collection order)”.

(4) In section 26 (setting aside of sum enforceable under section 24), in subsection (3), after “enforcing payment of that sum” insert “(including the making of a collection order)”.

(5) In section 27 (interpretation), at the appropriate place insert—

““collection order” means an order under section 3 of the Justice (No.2) Act (Northern Ireland) 2015;”.’”.

Minor and technical amendments to correct and improve drafting of the Bill

Clause 4, Page 3, Line 32

Leave out “sum due” and insert “outstanding amount”

Clause 4, Page 3, Line 33

Leave out “sum due” and insert “outstanding amount”

Clause 5, Page 4, Line 34

After “applies” insert “or which is treated by a provision of that section as if it were a benefit to which that section applies”

Clause 6, Page 5, Line 20

Leave out “(2)(a) or (b)” and insert “(2)”

Clause 11, Page 9, Line 15

After “make” insert “further provision about applications for deductions from benefits; and the regulations may in particular make”

Clause 13, Page 10, Line 32

Leave out “regarded” and insert “treated”

Clause 24, Page 17, Line 19

Before “either” insert “the individual”

Clause 24, Page 18, Line 25

At end insert—

“(10A) But the references in this Article to a sum adjudged to be paid by or imposed on a conviction do not include a reference to an amount payable under a confiscation order under Part 4 of the Proceeds of Crime Act 2002.”

Clause 24, Page 18, Line 26

Leave out from “officer” to end of line 28 and insert “, in relation to a supervised activity order, means a probation officer with responsibility for supervising the carrying out of the requirements of the order”

Clause 25, Page 20, Line 22

At end insert—

“(5A) In section 5(3) of the Treatment of Offenders (Northern Ireland) Act 1968 (power of court to detain young person in youth offenders centre for default), for “Article 47” substitute “Article 46C”.”.

Clause 27, Page 21, Line 23

Leave out “1998” and insert “2008”

Schedule 1, Page 37, Line 17

After “court” insert “in the first and third places it appears”

Schedule 1, Page 37, Line 20

Leave out “each place” and insert “the first, third and fourth places”

Schedule 1, Page 37, line 35

Leave out from second “debtor” to “by” in line 36 and insert “whose earnings are paid by the body as principal and who is accordingly treated by virtue of section 13(5) as being employed”

Schedule 2, Page 39, Line 25

At end insert—

“Police and Criminal Evidence (Northern Ireland) Order 1989

4A. In Article 19(1) (power of constable to enter and search), in sub-paragraph (a), after paragraph (ii) insert “; or

(iii) a warrant of commitment issued under section 9(1)(i) of the Justice (No. 2) Act (Northern Ireland) 2015 (default by debtor);”.”.

Schedule 2, Page 40, Line 26

Leave out “clerk of petty sessions” and insert “fixed penalty clerk”.

Direct committal for trial

New clause

After clause 44 insert—

‘Direct committal for trial: indictable offence triable summarily

44A.—(1) Section 9 of the Justice Act (Northern Ireland) 2015 (cases where direct committal provisions may apply) is amended as follows.

(2) In subsection (1) for “either” substitute “one”.

(3) In subsection (2) after paragraph (a) insert—

“(aa) that the offence is an indictable offence to which Article 45 of the Magistrates Courts (Northern Ireland) Order 1981 or Article 17 of the Criminal Justice (Children) (Northern Ireland) Order 1998 applies; or” .’

Court Funds Office

New Clause

After **Clause 44** insert—

“Costs of Accountant General in administering funds in court

44A. In section 116 of the Judicature (Northern Ireland) Act 1978 (fees), after subsection (1A) insert—

“(1B) The provision made by section 39 of the Administration of Justice Act 1982 in relation to the costs of administering funds in court does not prevent an order under subsection (1) from fixing fees to be taken by the Accountant General for the recovery of such costs (whether the order is made in addition to or instead of reliance on the provision made by section 39 of that Act for that purpose).””.

PART 1: THE COLLECTION AND ENFORCEMENT OF FINANCIAL PENALTIES

Part 1 of the Bill will create an entirely new regime for the collection and enforcement of financial penalties. It will create collection officers whose function it will be to operate and enforce collection orders as imposed by courts. Collection offices will be designated in law by the Department with a series of powers, provided by way of the collection order, which will be designed to, by and large, replace the current police role in collection and enforcement.

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
|---|---|--|
| <p>General</p> | <p>NIHRC notes that paragraph 60 of the Explanatory and Financial Memorandum accompanying the Bill states that all proposals have been screened and regarded to be Convention compliant. The NIHRC also notes the view of the Joint Committee on Human Rights (JCHR) which highlighted the good practice of departments in supplying a detailed human rights memorandum, giving a full explanation of the view that a Bill is compatible with human rights. NIHRC recommends that the Department of Justice should be asked to set out the basis for the statement of compatibility and to provide a detailed human rights memorandum if one has been completed.</p> | <p>All Departmental policies and proposals leading to legislation are screened to ensure that they are Convention compliant and a statement to this effect in Explanatory Notes to a Bill is in accordance with Executive guidance. The Departmental Solicitor's Office provides assistance to Departments in scrutinising legislative instructions to ensure that they are Convention compliant.</p> <p>The JCHR recommendations apply specifically to Westminster legislation. In line with Executive guidance, the Department does not propose to provide an additional Memorandum. We would, however, be happy to consider procedures should the Executive consider that detailed Memoranda should accompany future Executive Bills.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
|---|---|---|
| | <p>Mid and East Antrim Borough Council states that it is all too aware of the budget constraints faced by the Department of Justice with the proposed cut to its valued Court Service in Ballymena and funding issues in relation to Police and Community Partnerships. It states that fine collection, which is cost effective and successful, will allow for resources to be targeted in those areas where they can be of real benefit to communities and to the safety and well-being of its people. The Council recommends that once the Bill is passed consideration is given to utilising existing Department building stock, and in particular Ballymena court house, to provide an administrative headquarters for the collection officers and administrative staff.</p> | <p>The Department welcomes the Council's support for the package of fine collection and enforcement reforms.</p> <p>It is planned that the Fine Collection and Enforcement Service will be centrally located in existing NI Courts and Tribunals Service premises in Belfast.</p> |
| <p>Clause 3: Collection order</p> <p>Clause 3 provides that a collection order must be imposed by the court unless it is impracticable</p> | <p>The NIHRC recommends that in considering clause 3(4) an assurance should be sought from the Department that information on how a debtor can apply for the variation of an order and appeal a decision of the collection officer is included in guidance provided for under clause 21 of the Bill.</p> | <p>Advice on how a debtor can apply to a Collection Officer to vary a collection order and also appeal the decision of a Collection Officer will be included in guidance. This information will also be stated on the collection order itself and included in correspondence with the debtor.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
|--|---|--|
| or inappropriate to do so. | | |
| <p>Clause 4: Additional powers where collection order made</p> <p>Clause 4 provides that when a court makes a collection order, it may also order the collection officer to make an application for deduction of benefits, or may make an attachment of earnings order.</p> | <p>NIACRO recommends that a full means test is carried out to assess the impact of such a measure not just on the debtor but on any dependants. NIACRO is concerned that the deduction or freezing of such monies could negatively impact on partners and children, particularly in the case of an interim bank account order where there is no requirement to inform the debtor of this action in advance.</p> <p>NIACRO recommends that any financial assessment takes account of all of the individual's responsibilities including his/her dependents. It also suggests that there is a need to consider the impact on a person's existing Standing Orders and Direct Debits if implementing an attachment of earnings order or deduction from benefits as utility providers may withdraw services if payment is not maintained which could increase the incidence of default.</p> <p>NIACRO also recommends that the option to complete a Supervised Activity Order (SAO) should not just be an alternative to custody for a judge passing sentence, but should also be an alternative to the fine itself (see also Clause 24).</p> | <p>Information sought by the Collection Officer will be by way of completion of a Means Enquiry Form. The Means Enquiry Form will request information on a debtor's financial circumstances including income, outgoings and dependents.</p> <p>An Interim Bank Account Order will only freeze the amount of the fine and the Bank Account Order, which can only be made at a judicial hearing, will only be made for bank accounts held solely in the debtor's name and not for joint bank accounts.</p> <p>Guidance will be produced in relation to the use of Deduction from Benefits, Attachment of Earnings and Bank Account Order powers to ensure the most appropriate collection method is adopted in response to the debtor's specific circumstances.</p> <p>The Bill contains provisions that will allow the court to consider representations and impose the SAO forthwith (i.e. at point of sentence instead of waiting for default to occur). The debtor can also apply to the court for a SAO at any subsequent</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
|---|---|--|
| | <p>Women’s Aid has a number of concerns about the proposal to deduct court imposed fines or debts from benefits, particularly if any of these benefits are replaced by Universal Credit in future. It states that if a court fine was deducted from benefits which were allocated per household instead of per individual, this could amount to collective punishment of an entire family or household for the actions of an individual.</p> <p>Women’s Aid is also concerned that such a measure may result in victims of financial abuse being pushed even further into poverty. It states that this could leave victims with fewer options, for example being unable to afford even bus or taxi fare to enable them to physically leave an abusive relationship.</p> | <p>time without default having yet occurred.</p> <p>As stated above, a Means Enquiry Form completed by the debtor will include information on dependents and help inform any collection measures. Article 53 of the Magistrates’ Court (Northern Ireland) Order 1981 and Article 29 of the Criminal Justice (NI) Order 1996 requires a court to take into consideration the means of the offender when fixing the amount of a fine to be imposed on conviction.</p> <p>Deductions from benefits will be operated by DSD under their existing Third Party Deduction Scheme.</p> <p>The Scheme includes safeguards in relation to protecting the vulnerable and an appeal system in relation to the amount of the deduction being made.</p> <p>DSD controls include a limit on the number of deductions that can be in place at any one time and a maximum amount for total deductions that can be taken. The Bill does not change those controls - collection of a fine would sit <u>sixth</u> in the priority list for collection – and essential living expenses will be protected (e.g. housing or fuel arrears would be collected before a fine).</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| | | <p>Deductions for fine payment will also be restricted to a short list of eligible benefits only (Income Support, Jobseeker's Allowance, State Pension Credit and Employment and Support Allowance). Benefits provided to the vulnerable cannot be accessed, nor can Disability benefits, carer benefits, child benefit or child tax credit payments.</p> <p>The Department continues to work with DSD colleagues in relation to how the existing Third Party Deduction Scheme will operate when Universal Credit is introduced in Northern Ireland and to ensure that the safeguards proposed in the Bill can be replicated under any new scheme.</p> |
| <p>Clause 5: Default on payment: collection officer to contract debtor</p> <p>Clause 5 stipulates what a collection order must or can do where</p> | <p>The Information Commissioner's Office (ICO) is concerned that the proposal to allow data sharing arrangements for Collections Officers to verify an individual's employment, earnings or benefit information does highlight some data protection concerns. It states that although the Bill suggests that this access will only be permitted in the event of non-co-operation with an offender, it is also suggested this will be permitted in certain circumstances in the absence of an offender. The Data Protection Act requires that personal data be processed fairly and lawfully, and although the Bill may provide a legal provision to facilitate this, it states that the Department should review any appropriate fair processing notices to</p> | <p>An amendment will be made to the Bill at Consideration Stage to provide that DSD may disclose social security information to a court or a collection officer for the purpose of facilitating a decision by a court or a collection officer whether or not to make an application for deduction from benefits or facilitating the making of the application.</p> <p>Guidance will include the appropriate circumstances in which a collection officer or court should seek social security information from DSD.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>an offender fails to comply with the collection order.</p> | <p>reflect this provision. The ICO states that any disclosures should be considered on a case by case basis and should be proportionate. It strongly advises that a privacy impact assessment is conducted with respect to this provision to assist with the identification of any potential intrusion on privacy. The ICO states that the Department will also need to be content that this activity will also take account of the Human Rights Act.</p> | <p>An individual assessment of the appropriateness of this will be carried out in each case.</p> <p>It will be an offence for a person to whom that information has been disclosed to disclose it to another person or use it for another purpose.</p> <p>The Department is engaging with the Departmental Information Manager and a full review will be completed of the new provisions including a review of any appropriate fair processing notices.</p> <p>The privacy impact assessment questionnaire will also be completed and a full privacy impact assessment will be conducted if required.</p> <p>On the basis of the above, the Department is satisfied that all data sharing arrangements and all personal data processing will be made in accordance with the Data Protection Act 1998 and will be compliant with Human Rights Act requirements</p> |

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| <p>Clause 9: Powers of court on referral of debtor's case</p> <p>Clause 9 sets out the sequence of using referral options made under Clause 6 and Clause 8 and provides for when they may or may not be used. The clause stipulates that where the court is dealing with someone aged under 18 or decides in the case of an adult to make</p> | <p>NIACRO is opposed to using prison as a punishment for fine default for minor offences. Given that clause 19 states the provisions in this chapter relate to fines amounting to less than £500, it believes it is inappropriate and unnecessary to imprison those who default on sums of this value, particularly given the high cost of imprisonment and lasting impact to the person and their family, and therefore recommends that Supervised Activity Orders (SAOs) are a more appropriate measure for those who default on fines of less than £500.</p> <p>NIACRO also recommends that completing an SAO should be purposeful and relevant to the individual's situation and it should contribute to desistance from future offending behaviour e.g. a Managing Money Matters accredited programme for those experiencing difficulty managing money or an Alcohol Awareness programme for those fined</p> | <p>The focus of the Bill is to provide additional ways by which financial penalties can be paid and collected so as to avoid default in the first instance, supported by a more expansive range of default options, which the judge will consider in a priority order (e.g. a SAO will be prioritised over imprisonment).</p> <p>There will be an emphasis on community based alternatives to imprisonment ahead of custody for those who remain in default after all collection options have been exhausted. SAOs may be imposed in respect of financial penalties up the value of £1000.</p> <p>Committal to prison may, however, be imposed where all other approaches have failed or are considered inappropriate. This will be a judicial decision.</p> <p>Two pilot exercises were undertaken by the Probation Board for Northern Ireland to trial the SAO as an alternative to prison for fine default.</p> <p>The imposition of a SAO would see activities to be completed by individuals in lieu of custody being tailored to their individual needs, based on</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>a supervised activity order or commit an adult debtor to prison whether or not in default of distress, the court must give reasons for its decision.</p> | <p>for an alcohol related offence.</p> <p>NIHRC states that clarification regarding how the DoJ will ensure that imprisonment is used as a measure of last resort, in order to reflect the language and spirit of CoE Recommendation 1469, and of the concluding observations of UNCEDAW and CAT Committees should be requested.</p> <p>The Commission also recommends that assurance should be sought from the Department that this is addressed in guidance.</p> <p>The PSNI states that it would be helpful if there was a presumption that fine sentences of imprisonment are to be served consecutively rather than concurrently. It states that this would act as a more significant deterrent to offenders considering not paying, breaching SAO's or electing for prison. Similarly for Supervised Activity Orders. It states that it has discussed this with the Department.</p> | <p>a personal assessment carried out by PBNI. The introductory sessions of a SAO will include citizenship and money management modules.</p> <p>See above in respect of the sequence of default options available to the judiciary and the prioritisation of other default options ahead of imprisonment. In addition, the Judicial Studies Board will provide guidance to the judiciary on the operation of the provisions within the Bill in advance of commencement.</p> <p>The Collection Officer's report will show all attempts to secure payment before referral to a default hearing. We are happy to confirm that operational guidance will also address this issue.</p> <p>The proposal to have <u>default periods served consecutively</u> was the subject of public consultation previously with the majority of respondents opposing the proposal.</p> <p>The Bill seeks to provide additional ways to pay and to prioritise these over committal to prison.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| | <p>The PSNI states that there should be no incentive for persistent offenders to elect for prison. Currently persistent offenders can serve a fine sentence concurrently with other unrelated sentences which is of negligible deterrent value.</p> <p>The British Parking Association supports reasonable and fair means to recover unpaid debts including monies to be withdrawn from a debtor's bank account however is of the view that these activities need to be carefully managed and a set of rules and procedures put in place to protect vulnerable persons.</p> | <p>Where custody is determined by a judge to be the most appropriate default option, the Bill proposes the removal of remission for sentences of imprisonment for fine default and for the breach of a SAO. This will act as an additional deterrent to those who might consider custody preferable to payment.</p> <p>Regulations in relation to Bank Account Orders will be made under clause 17 (7) of the Bill and these will be supported by guidance for Collection Officers.</p> |
| <p>Clause 10: Application for deduction from benefits</p> <p>Clause 10 defines what an application for a deduction of benefits is,</p> | <p>See issues raised by NIACRO and Women's Aid under Clause 4.</p> <p>The Department of Social Development supports the provision but continues to engage with DoJ to discuss issues of concern and agree a way forward on the level of access required by DoJ staff to its benefits system; the development of policies, processes, systems and</p> | <p>Comments to respond to these issues are provided above in relation to Clause 4.</p> <p>The Department welcomes the continued support of, and engagement with, DSD colleagues in this regard. We will continue to work with DSD to develop the detail of operational arrangements.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>namely an application to the Department of Social Development for deductions to be made from a debtor's relevant welfare benefit to pay the sum that he owes to the Court.</p> | <p>legislation to facilitate recovery of fines; and agree a financial package to account for the set up and running costs as well as debt recovery displacement.</p> <p>The Committee for Social Development highlights a concern that, where a customer is already having deductions made from benefits e.g. to pay rent or electricity arrears, the Department may not be able to make further deductions as it would break the 15% ceiling. Noting that under these circumstances an individual could be imprisoned, the Committee urges the Department to consider the possibility of no further action until a previous debt has been cleared and deduction from benefit at a later date could take place.</p> | <p>The Department does not consider it appropriate to hold further collection or enforcement options in abeyance if deductions from benefits are not possible under the Third Party Deduction Scheme because the debtor already has 3 priority deductions in place.</p> <p>In instances where a deductions order cannot be made then the Collection Officer will consider the other options available to secure payment.</p> <p>If no other payment option is appropriate or successful, then the Collection Officer will refer the matter back to the court for the judge to consider the range of enforcement options available in priority order – custody would be the final option - under default hearing proceedings.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>Clause 12: Enquiries into debtor's means</p> <p>Clause 12 requires the court to request information from the debtor before making an order for an application for deductions from benefits. The Clause sets out what kind of information the court may request from the debtor, namely his name, address, date</p> | <p>NIACRO recommends that the court may also request information about the individual's dependents and relevant financial commitments before making an application for deductions from benefits or earnings to ensure that the family of the debtor is not unfairly penalised.</p> <p>NIHRC recommends that clause 12(1) is amended to ensure that the court enquires into debtor's outgoings, potential hardship and caring responsibilities, in addition to date of birth, National Insurance Number and details of any relevant benefits received.</p> <p>Women's Aid states (as above) that if a court fine was deducted from benefits which were allocated per household instead of per individual, this could amount to collective punishment of an entire family or household for the actions of an individual.</p> | <p>In addition to enquiries that the court will make as a matter of routine before imposing a fine, the Means Enquiry Form will request information on a debtor's financial circumstances including income, outgoings and dependents.</p> <p>Clause 10 makes clear that deductions may only be taken from Income Support; Jobseeker's Allowance; State Pension Credit or Employment Support Allowance</p> <p>The safeguards outlined above that prioritise and protect essential living expenses should provide reassurance that this will not occur.</p> <p>The DSD Third Party Deduction Scheme includes safeguards in relation to protecting the vulnerable and includes an appeal route through the Social Security Appeals Tribunal.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| of birth, National Insurance number and benefits information. | | |
| <p>Clause 13: Attachment of earnings order</p> <p>Clause 13 defines the attachment of earnings order, namely that a person who employs the debtor must deduct specified amounts from the debtor's wages and pay them to the court in</p> | <p>NIACRO recommends that, as above, a financial assessment should be made before an order is made.</p> | <p>In addition to enquiries that the court will make as a matter of routine before imposing a fine, the Means Enquiry Form will request information on a debtor's financial circumstances including income, outgoings and dependents.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| order to discharge the outstanding amount. | | |
| <p>Clause 15: Interim bank account order</p> <p>An interim bank account order requires a deposit-taker with which a debtor has an account to freeze the sum specified in the order in the account and to not reduce the credit balance below the amount.</p> <p>Clause 15</p> | <p>NIHRC acknowledges that the hardship payment order in clause 16 will provide a safeguard against destitution, however recommends that regulations made under clause 15 ensure a detailed assessment of income and outgoings takes place at the time an interim bank account order is being considered to prevent the risk of destitution in the first instance.</p> | <p>As indicated above, a Means Enquiry Form will request information on a debtor's financial circumstances including income, outgoings and dependents. All of the information provided by the debtor will be used by the Collection Officer in considering the appropriate next steps.</p> <p>This will also be addressed through the production of operational guidance.</p> <p>An Interim Bank Account Order will freeze the amount of the outstanding financial penalty only in an account held in the debtor's sole name. Joint accounts will not be frozen or accessible.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>provides a regulation making power in order, in particular, to make further provisions about requesting information from the deposit-taker, the creation of offences in connection with the order, the contents of the interim order, service and administrative charges.</p> | <p>NIHRC also recommends that a requirement to notify the debtor of this possibility is inserted into clause 15 which would help fulfil the State’s obligations under ECHR, Article 3 and ICESCR, Article 11. Alternatively an assurance should be provided by the Department that relevant regulations and guidance will provide for claimants to be informed of the possibility of a hardship payment.</p> | <p>The Department is happy to confirm this will be dealt with in Regulations and guidance.</p> <p>The option for the debtor in relation to making an application for a hardship payment will also be included in correspondence sent by the Collection Officer to the debtor.</p> |
| <p>Clause 18: Vehicle Seizure Order</p> | <p>The British Parking Association is of the view that the seizure of vehicles for non-payment of fines is acceptable providing there is a set of regulations in place to maintain</p> | <p>Regulations in relation to Vehicle Seizure Orders under clause 18 (6) will be made. These will be supported by detailed guidance.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>Clause 18 defines a vehicle seizure order, namely that a debtor's vehicle may be seized in order to secure payment of the sum due.</p> | <p>the integrity of the scheme and protect vulnerable people. It states that, in relation to the collection officer informing the debtor of his intentions to seize a vehicle, it agrees that it is important to notify a debtor of intentions to seize a vehicle. This transparency will ensure a high standard of behaviour is maintained and can prevent a high volume of complaints being reported from motorists by providing the debtor with an opportunity to pay the sum owing. It states that its members have also found it of benefit to apply a level 2 fine if the debtor, having been informed of a possible application for a vehicle seizure, attempts to hide or dispose of the vehicle.</p> <p>NIHRC recommends that regulations made under clause 18(6)(b) should provide that the responsible court takes into account the impact of a vehicle seizure order on an individual's employment to ensure that an individual is not deprived of their source of income in order and to comply with ECHR, Article 1, Protocol 1, ICESCR, Article 6 and CFREU, Article 15.</p> | <p>Additionally, and in response to comments on the regulation making powers under Clause 18(6) by both the NIHRC and the Examiner of Statutory Rules, the Department is proposing to bring forward an amendment to specify, on the face of the Bill, the issues that the court should take into account before making a vehicle seizure order</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>Clause 24: Supervised activity orders</p> <p>Clause 24 substitutes a new Article 45 into the Criminal Justice (Northern Ireland) Order 2008. As well as providing for the imposition of a supervised activity order (“SAO”) when a person is in default of payment, the new Article also now provides for an SAO to be</p> | <p>NIACRO welcomes the ability for courts to impose Supervised Activity Orders (SAOs) instead of custodial sentences and welcomes the increase of the amount to £1,000. NIACRO states that the option to complete an SAO should not just be an alternative to custody for a judge passing sentence but should also be an alternative to the fine itself.</p> <p>Mid and East Antrim Borough Council supports the aims of the Bill in relation to fine collection and enforcement. It states that the development of a system which improves people’s ability to pay their fines and reduce levels of imprisonment of for non-payment is important; as is the freeing up of police officers time for “more important front line duties” and allow for the “correct targeting” of prison services. The Council believes that the ability for people to clear their fine through community based opportunities <u>should not be pursued</u> as it may encourage non-payment.</p> <p>The Committee for Social Development recommends the Department explores other options before making deductions from benefits and/or imprisonment of an individual and agrees that community service is an appropriate alternative.</p> | <p>The Department welcomes NIACRO’s support for these proposals and would mention again the points made under Clause 4 about the provisions in the Bill that will allow the court to consider representations and impose the SAO forthwith (i.e. at point of sentence instead of waiting for default to occur)</p> <p>The Department does not agree with the Council’s belief that clearing a fine by community based activity in lieu of custody will encourage non-payment.</p> <p>The range of options available to a Collection Officer is set in sequential order under clause 6 to encourage payment in the first instance.</p> <p>In addition the options available to the judiciary are also sequenced in priority order with the option of an SAO to be considered <u>after</u> time extension, instalment order, deductions from benefits or attachment of earnings, Bank Account Order and Vehicle Seizure Order, all of which are further designed to secure payment so far as possible.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| made when the person makes an application for a SAO, default not yet having occurred. | | <p>Where an SAO is imposed, it is by no means considered to be a 'soft' option – evaluation of the two pilot exercises included interviews with participants who confirmed that having completed their duties they would be minded to pay any future fines that they might incur rather than undertake another SAO.</p> <p>In light of this, and in recognition of a gap in the existing SAO legislation, the Bill now includes provisions to allow a debtor to pay off the remaining balance of their fine after an SAO has been initiated.</p> <p>Finally, the Council may wish to note that breach proceedings for non-conformity of an SAO's requirements can result in a longer period of imprisonment being imposed – also without remission – than would have been the case if they had been imprisoned for non-payment of the fine in the first place.</p> |
| Clause 25: Restriction on detention of children for default in paying fines | NIACRO welcomes the removal of custody as an option for children who default on fines. However it does not believe fines are an appropriate disposal for children. It states that fines do not address the underlying causes of offending | This Bill does not seek to change sentencing policy, rather it seeks to improve collection rates and reduce instances of non-payment where the Court considers the fine to be the appropriate sentencing disposal. |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| <p>etc.</p> <p>Clause 25 amends the Criminal Justice (Children) (Northern Ireland) Order 1998 by inserting new Article 46C. New Article 46C provides that a child shall not be detained in custody for fine default unless that child is already in custody or has been ordered to be detained in custody for a period which</p> | <p>behaviour at any age and in the case of children, the impact of this disposal is more likely to be felt by the young person's parents and family. This view is supported by the Children's Law Centre.</p> <p>NIACRO believes that diversionary measures for children should be promoted for young people involved in minor offences. In its views such measures will do more than a fine to address the offending behaviour, prevent its further development, and divert young people away from the criminal justice system and the lasting negative impact of criminal records.</p> | <p>In terms of diversionary disposals, the Department agrees that children should, as far as possible, be diverted from the formal criminal justice system and that custody should be used as a last resort.</p> <p>In recent years, implementation of this policy has led to the introduction of police discretion, Youth Engagement Clinics and diversionary youth conferencing, all of which provide the opportunity for diverting children at the earliest possible stage and providing support to help address their offending or anti-social behaviour.</p> <p>A current Scoping Study on children in the justice system by the Department will build still further on this approach by taking an end-to-end look at the system with the aim of simplifying it and ensuring we can deliver more focused interventions at the earliest possible stage to improve longer-term outcomes for children by diverting them away from formal court adjudication wherever appropriate.</p> |

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| has not yet begun. | | |
| DOJ AMENDMENTS | | |
| <p>Proposals for a police power of arrest in relation to Fine Default Hearings</p> | <p>The PSNI is of the view that such a power may be disproportionate and unnecessary in the circumstances. The PSNI has discussed this with the Department and is due to discuss this further with the Office of the Lord Chief Justice prior to refining this proposal.</p> <p>In oral evidence the PSNI indicated that it accepted the need for such a power in certain circumstances.</p> <p>The NI Policing Board states that, in a time of economic austerity and increasing pressure on policing and criminal justice budgets, the civilianising of fine collection and enforcement has the potential to make more PSNI officers available to tackle other strategic priorities and make better use of police resources. The NI Policing Board welcomes the fact that the Department anticipates that warrants issued to police will drop by as much as 90% following the introduction of a new civilianised service and highlights</p> | <p>Discussions have taken place with PSNI in relation to developing a policy for the power to issue an arrest warrant in relation to a debtor who fails to attend a Default Hearing, which they now support (as indicated to the Committee during PSNI oral evidence on the Bill during the meeting of 5 November).</p> <p>An amendment to the Bill will be made at Consideration Stage to allow the court to issue an arrest warrant, endorsed for bail, to those who know that they have been fined and know the consequences of default, but where the court is not satisfied of service of the summons to the hearing or that the defaulter is evading service, and is considering committing the debtor to custody for the default.</p> <p>This power will, therefore, only be used in those limited circumstances.</p> |

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| | <p>that it responded to previous Department of Justice consultations in 2011 and 2014 on the proposals for a police power of arrest in relation to fine default hearings.</p> | <p>The Department is mindful of proportionality considerations and wishes to ensure that no defaulter is detained for any longer than is necessary. The proposed warrant will therefore allow the defaulter to be released without attending a police station if he or she signs a recognizance to appear at the default hearing</p> <p>The PSNI will not, however, have a power of entry and search in relation to such arrests as a result of the discussions with the Department (it was this latter point that the police considered disproportionate rather than the power of arrest itself).</p> |
| <p>Provisions to improve information access and data sharing in the fine collection process</p> | <p>The Department of Social Development supports the provision but continues to engage with DoJ to discuss issues of concern and agree a way forward on the level of access required by DoJ staff to its benefits system; the development of policies, processes, systems and legislation to facilitate recovery of fines; and agree a financial package to account for the set up and running costs as well as debt recovery displacement.</p> <p>The Committee for Social Development notes the proposal for DSD to access and share data of its customers with the Department of Justice. While this appears</p> | <p>See also points addressed above under clause 10</p> <p>An amendment to the Bill will be made at Consideration Stage in order to facilitate the sharing of information between court or Collection Officer and DSD in relation to social security information.</p> |

| CLAUSE/ SCHEDULE/ SUBJECT AREA | Key Issues Raised | Department of Justice Response |
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| | <p>necessary to facilitate the operation of the Bill the Committee emphasises the need for safeguards to be agreed so that only the information required to inform a decision regarding fine repayment is released and data access and release will be conducted in accordance with the Data Protection Act 1998.</p> <p>The PSNI states that it is important that Collection Officers have access to information both from HMRC and for benefit claimants via the Department of Social Development in order not to have collection options frustrated. Such information may also assist when devising strategies to serve details of Default Hearings</p> | <p>An amendment at Westminster is also required to allow HMRC to share financial information with a court or Collection Officer for the purpose of making an attachment of earnings order</p> <p>All data sharing arrangements and all personal data processing will be made in accordance with the Data Protection Act 1998</p> |

PART 3: MISCELLANEOUS

PART 4: GENERAL & OTHER PROPOSED AMENDMENTS BY RESPONDENTS

Part 3 of the Bill creates additional provisions in terms of lay visiting arrangements for police stations, an offence of possession of extreme pornographic images, and a scheme for the early removal of prisoners.

| <p>PART 3</p> <p>CLAUSE/ SCHEDULE/ SUBJECT AREA</p> | <p>Comments</p> | <p>Department of Justice Response</p> |
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| <p>Clause 43: Early removal from prison of prisoners liable to removal from United Kingdom</p> <p>Clause 43 makes general provision for the removal from a Northern Ireland prison of a prisoner who is liable for removal from the United Kingdom and who has served at least one-half of the requisite custodial period.</p> | <p>NIACRO welcomes the provision that a prisoner can only be removed from the UK in the circumstances outlined with his/her agreement.</p> <p>NIACRO recommends that appropriate translation services are provided where necessary and that the family of the prisoner are engaged with regarding any proposed move to ensure there is full understanding of the consequences of consenting to removal. It also states that legal professionals must also be trained in and informed of this provision.</p> | <p>The Department welcomes NIACRO's support for the early removal scheme.</p> <p>The points that they make in relation to translation services and training are, however, matters for those who will be undertaking the actual removal i.e. the Home Office's Immigration Service.</p> <p>It's important to remember that our changes are not introducing removal - they are simply allowing removals, upon which decisions have already been taken to be brought forward by up to 135 days with the prisoner's agreement.</p> |

Part 4 of the Bill makes a number of general provisions dealing with regulation and order making, commencement and short title, and ancillary provision.

| PART 4 CLAUSE/ SCHEDULE/ SUBJECT AREA | Comments | Department of Justice Response |
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| <p>Clause 45: Ancillary Provision</p> <p>This clause enables the Department by order to make any supplementary, incidental, consequential, transitional or other provision necessary to give full effect to the provisions of the Act.</p> | <p>BASC, Gun Trade Guild NI (GTGNI) and Countryside Alliance Ireland (CAI) have major concerns in relation to Clause 45 (known as a “Henry VIII” Clause). They believe this Clause would give the department overriding powers to change the content of the Bill without Assembly scrutiny and therefore assert that Clause 45 should be removed in its entirety.</p> <p>GTGNI states that Clause 45 has the potential to undermine the democratic process and notes it could give such wide ranging powers to an individual who would not be subject to any oversight, indeed it is positively frightening that a Department responsible for Justice has even proposed it. It states that the mechanism is already in place for the Department to bring forward legislation to deal with any future changes that may be needed.</p> <p>Hollow Farm states that it appears that the Minister does not wish to be bound by the substance of the Bill. It suggests that under Clause 45 by grabbing this power to alter, amend evoke or otherwise ignore the provisions of the Bill he provides himself with the legal means whereby he can put in place his own interpretation of those provisions which he feels helpful or in respect of provisions he feels unhelpful, or</p> | <p>As indicated by the Minister during Second Stage of the Bill, the Department, in recognition of the Committee’s concerns around what was Clause 86 in the Justice Act (NI) 2015 are proposing to remove Clause 45 in its entirety.</p> <p>An amendment will instead be offered for the Committee’s consideration which will follow the model accepted at Further Consideration Stage of the 2015 Act. The proposed amendment will create a much more tightly drawn power to make ancillary provisions under much more restrictive circumstances, limited to Part 1 – Fines and other penalties – of the Bill only.</p> <p>It is proposed that any exercise of the revised power will be subject to approval by a resolution of the Assembly. Accordingly the Department will not have unilateral power to make any changes, as the approval of the Assembly would be needed.</p> |

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| | difficult to implement, or expensive to implement. Hollow Farm believes the powers sought under Clause 45 are draconian and strongly recommends that Clause 45 be removed. | |
| <p>Clause 47: Commencement and Short Title</p> <p>This Clause provides for the short title of the Act and for Commencement.</p> | <p>BASC believes that the Department’s banded system amendment should be accompanied by a commencement order.</p> <p>BASC also believes that any changes to NI firearms legislation relating to the age restriction for young shooters should be enacted automatically on receiving Royal Assent.</p> <p>CAI wants all clauses relating to firearms issues to come into operation immediately after Royal Assent.</p> | <p>This proposal has been accepted and is covered in the proposed legislation. Commencement would be the day following Royal Assent</p> |

| OTHER PROPOSED AMENDMENTS BY RESPONDENTS | | |
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| <p>Disclosing private sexual photographs and films with intent to cause distress – NIHRC</p> | <p>The NIHRC states that the Criminal Justice and Courts Act 2015 created the new offence of disclosing private sexual photographs and films with intent to cause distress, colloquially known as ‘revenge porn’. A person guilty of an offence would be liable on conviction on indictment to a term not exceeding 2 years or a fine or both, and on summary conviction to imprisonment for a term not exceeding 12 months, or a fine or both. The NIHRC notes that the provisions were amendments made to the Bill in the Lords. The offence extends to England and Wales.</p> | <p>Given time constraints and other pressing issues it wasn’t possible to give appropriate policy consideration to this new offence in time for it to be included as a proposal for similar change in the Justice (No. 2) Bill.</p> |

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| | <p>The NIHRC notes that the Justice No. 2 Bill does not contain a similar provision and advises that a number of instruments are relevant in this context, including ECHR, Articles 8 and 10, the Istanbul Convention and General Recommendation No 19, Convention on the Elimination of Discrimination Against Women.</p> <p>The NIHRC states that there is a duty on the State to ensure that, regardless of intent, Article 3(c) of the Optional Protocol to the Convention on the Rights of the Child (CRC) on the sale of children, child prostitution and child pornography is not violated. Article 3(c) requires state parties to ensure the offences of producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography are fully covered under the criminal law. Article 9(3) of the Optional Protocol to the CRC requires State parties to ‘take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.’</p> <p>Article 10(1) of the Optional Protocol to the CRC requires State parties to take all necessary steps to strengthen international co-operation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for act involving child pornography.</p> <p>The NIHRC recommends that due consideration is given to an amendment in the Bill to include the offence of</p> | <p>The Department will, instead, include the proposal in a policy consultation for future legislative change, as part of a wider review into a number of related areas covering certain sexual offences and child protection</p> <p>Once that consultation is complete the Department will bring forward legislative proposals to the Assembly in the next mandate.</p> |
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| | <p>disclosing private sexual photographs and films with intent to cause distress, giving due regard to the Convention on the Elimination of Discrimination Against Women and the Optional Protocol to the United Nations Convention on the Rights of the Child. It states that this would bring the law into line with provision in England & Wales.</p> | |
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