

**Committee for Justice**

# **Report on the Criminal Justice Bill (NIA10/11-15)**

**Together with the Minutes of Proceedings, Minutes of Evidence,  
Written Submissions and Other Memoranda and Papers relating to the Report**

**Ordered by the Committee for Justice to be printed 13 December 2012  
Report: NIA 86/11-15**



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# Membership and Powers

The Committee for Justice is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, Section 29 of the Northern Ireland Act 1998 and under Standing Order 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department of Justice and has a role in the initiation of legislation.

The Committee has power to:

- consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- consider relevant subordinate legislation and take the Committee stage of primary legislation;
- call for persons and papers;
- initiate inquiries and make reports; and
- consider and advise on any matters brought to the Committee by the Minister of Justice.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The membership of the Committee during the current mandate has been as follows:

Mr Paul Givan (Chairman)  
Mr Raymond McCartney (Deputy Chairman)  
Mr Stewart Dickson  
Mr Alex Easton<sup>1</sup>  
Mr Tom Elliott<sup>2</sup>  
Mr William Humphrey<sup>1</sup>  
Mr Séan Lynch  
Mr Alban Maginness  
Ms Rosaleen McCorley<sup>3</sup>  
Mr Patsy McGlone<sup>4</sup>  
Mr Jim Wells

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1 With effect from 1 October 2012 Mr William Humphrey and Mr Alex Easton replaced Mr Peter Weir and Mr Sydney Anderson.

2 With effect from 23 April 2012 Mr Tom Elliott replaced Mr Basil McCrea.

3 With effect from 10 September 2012 Ms Rosaleen McCorley replaced Ms Jennifer McCann.

4 With effect from 23 April 2012 Mr Patsy McGlone replaced Mr Colum Eastwood.

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## List of abbreviations and acronyms used in the report

ATMG	Anti-Trafficking Monitoring Group
CAJ	Committee on the Administration of Justice
DoJ	Department of Justice
ECHR	European Convention on Human Rights or European Court of Human Rights
EEA	European Economic Area
EWCA	England and Wales Court of Appeal
FSNI	Forensic Service Northern Ireland
GRETA	Council of Europe's Group of Experts on Action Against Trafficking in Human Beings
ICCPR	International Covenant on Civil and Political Rights
MLA	Member of the Legislative Assembly
MoPI	Management of Police Information
NGOs	Non-Government Organisations
NIACRO	Northern Ireland Association for the Care and Resettlement of Offenders
NICCY	Northern Ireland Commissioner for Children and Young People
NICEM	Northern Ireland Council for Ethnic Minorities
NIHRC	Northern Ireland Human Rights Commission
NIPB	Northern Ireland Policing Board
NSPCC	National Society for the Prevention of Cruelty to Children
OCT	Organised Crime Taskforce
PBNI	Probation Board for Northern Ireland
PCSPs	Policing and Community Safety Partnerships
PPANI	Public Protection Arrangements Northern Ireland
PPS	Public Prosecution Service
PSNI	Police Service of Northern Ireland
SOPO	Sexual Offences Prevention Order
TIP	US Trafficking in Persons
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WSN	Women's Support Network
VOO	Violent Offender Orders

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# Executive Summary

1. This report sets out the Committee for Justice's consideration of the Criminal Justice Bill.
2. The Bill consists of 10 clauses and 4 schedules and proposes to change the law on sex offender notification provisions; introduce new offences aimed at preventing and combating human trafficking and protecting its victims; and establish a new legislative framework for fingerprints and DNA samples and profiles.
3. The Committee requested evidence from interested organisations and individuals as well as from the Department of Justice as part of its deliberations on the Bill. Written submissions were received from 27 individuals and organisations, 21 of which provided substantive commentary on the three policy areas covered in the Bill, and the Committee took oral evidence from 8 organisations.
4. The Committee also consulted the Attorney General for Northern Ireland on a proposed amendment the Committee was considering introducing at Consideration Stage to abolish the offence of Scandalising the Court.

## **Delegated Powers in the Bill**

5. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered that most of the delegated powers were appropriate but drew the attention of the Committee to the provisions in Article 63D(5) of PACE as inserted by Schedule 2. The Examiner was of the opinion that the prescribed circumstances relating to the application for the Commissioner's consent to retain fingerprints and DNA profiles should be set out on the face of the Bill with power to amend by way of subordinate legislation subject to affirmative resolution if necessary, rather than leaving it to subordinate legislation subject to negative resolution as currently proposed. The Department subsequently provided an amendment to the Committee addressing this issue.

## **Key Issues relating to the Clauses and Schedules in the Bill**

6. The Committee agreed the clauses in the Bill as drafted or as drafted with proposed departmental amendments at its meeting on 6 December 2012. However, a number of Committee Members indicated that they were unable to support Clause 7 and Schedules 2 and 3 which insert into PACENI the new framework governing the retention and destruction of fingerprints, DNA samples, etc. and makes consequential amendments and highlighted their intention to bring forward amendments to this part of the Bill at Consideration Stage.

## **Sex Offender Provisions**

7. Clauses 1 to 4 and Schedule 1 of the Criminal Justice Bill deal with sex offender provisions, specifically the review of indefinite offender notification requirements; ending of notification requirements for acts which are no longer offences; offences committed in a European Economic Area State other than the United Kingdom; and sexual offences prevention orders.
8. The Committee agreed that it was content with these clauses and Schedule. The Committee was supportive of the inclusion of the provision to place statutory notification requirements on offenders with convictions from another European Economic Area State who come to Northern Ireland for a period of more than seven days and the provision amending the Sexual Offences Act 2003 to place positive obligations on a person subject to a Sexual Offences Prevention Order (SOPo) to undertake a particular action, viewing these as welcome additions that would improve public protection arrangements.

### **Human Trafficking Provisions**

9. Clauses 5 and 6 of the Criminal Justice Bill create two new offences relating to trafficking people for sexual exploitation and trafficking people for other exploitation.
10. The Committee had previously stated that it wishes to see the strongest possible legislation introduced in Northern Ireland in relation to human trafficking and therefore welcomes the introduction of these new offences. The Committee did however express concerns regarding the possibility that conviction of human trafficking offences would attract a sentence of less than six months or a fine and felt this did not reflect the gravity of the offences.
11. The Department subsequently indicated that, in response to the concerns raised by the Committee, the Minister was considering whether there is a case to make these offences indictable only, which would mean that offences would be heard in the Crown Court, where the maximum term of imprisonment is 14 years. The Department advised that further work on this needed to be completed and if the Minister decided that he wished to make human trafficking offences indictable only he would table an amendment to the Bill at Consideration Stage.
12. The Committee noted the Minister's position and agreed that the issue of sentences for human trafficking is an area of concern. Given that, as yet, there have not been many convictions for this type of offence, the Committee agreed to review the position and consider the matter further if it felt that sentencing did not reflect the seriousness of the crime. The Committee also agreed to consider the matter further when the Minister had clarified whether he was going to table an amendment at Consideration Stage to make such offences indictable only.
13. In the evidence received by the Committee on this part of the Bill a number of the voluntary organisations stated that there was an opportunity to put further measures in relation to human trafficking into legislation, particularly in relation to protection, assistance and support for victims, including children, and training and investigative tools, which the Department had missed. The organisations were of the view that the Department had adopted a minimalist approach in implementing the EU Directive on Human Trafficking.
14. The Committee recognised the merit in making further legislative provision in additional areas and agreed that it would give further consideration to this in the context of Lord Morrow's Private Members' Bill on human trafficking which will come to the Committee for scrutiny following its introduction into the Assembly.
15. The Committee also noted that the Interdepartmental Ministerial Group, together with the UK Human Trafficking Centre, fulfilled the UK obligations in relation to a National Rapporteur but expressed some concerns that the process was not independent of Government. Given that those countries that had created an independent overseer had seen real success in the quality of information available and the profile of trafficking in their parliaments, the Committee agreed to raise the issue of an independent national rapporteur with the Minister. Depending on the Minister's response the Committee agreed that it may wish to return to this matter during its consideration of Lord Morrow's Private Members' Bill on human trafficking.

### **Retention of Fingerprints, DNA Profile etc. Provisions**

16. Clause 7 of the Bill and Schedules 2 and 3 insert into PACENI the new framework governing the retention and destruction of fingerprints, DNA samples, etc. and makes consequential amendments. It also requires the Department to make an order containing transitional or saving provisions associated with the coming into force of that Clause, and the repeals in Part 2 of Schedule 4. In particular, the Department must provide for the destruction or retention of biometric material already in existence at the point this legislation comes into operation. This will enable the Department to ensure that the retention and destruction regime set out in the Bill is applied to existing material, while recognising that this exercise may take some time to complete.



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17. The retention framework provisions are being made in response to the 2008 judgement of the ECHR in the case of *S and Marper v UK*. The ECHR ruled that the provisions in the Police and Criminal Evidence Act 1984 (PACE) for England and Wales permitting the indefinite retention of DNA and fingerprints from unconvicted individuals violated Article 8 (right to privacy) of the ECHR. Northern Ireland has similar provisions in PACENI.
  18. The Committee agreed to support Clause 7 and Schedules 2 and 3 with some Members content that changes to the Retention Framework in relation to the indefinite retention of DNA and fingerprints from unconvicted individuals were required and the proposals in the Bill were proportionate and would continue to assist in the detection and prevention of crime which was in the interest of public protection.
  19. Other Committee Members however expressed strong reservations regarding whether the proposals for the retention of material were proportionate and necessary particularly for those arrested or charged but not convicted of a qualifying offence, in relation to the policy of indefinite retention in a substantial category of offences and in relation to children and young people. They were also concerned with the inclusion of cautions, penalty notices and diversionary youth conferences within the retention framework. They indicated that they had serious concerns regarding whether the framework as proposed is compatible with human rights standards and were therefore not content with Clause 7 and Schedules 2 and 3. They indicated their intention to bring forward a number of amendments relating to this part of the Bill at Consideration Stage.

**Proposed new provisions for inclusion in the Bill**

20. The Department informed the Committee of a number of new provisions it intends to bring forward at Consideration Stage. The new provisions relate to notification requirements for sex offenders who travel within the United Kingdom; the issue and withdrawal of notices in relation to the examination of vulnerable defendants through a Registered Intermediary; and licence arrangements relating to the release of young offenders convicted of certain serious crimes.
  21. The Committee briefly considered the merits of each of them and agreed that it was content to support their inclusion in the Bill at Consideration Stage.
  22. In response to the Committee's call for evidence Ian McCrea MLA wrote requesting that the Committee include a miscellaneous provision in the Bill relating to statutory prohibitions on holding firearms.
  23. Mr McCrea outlined that there is currently an 8 year prohibition or a life prohibition on a person from purchasing, acquiring or possessing a firearm and ammunition at any time if they are sentenced or a suspended sentence is imposed. Both prohibition tariffs can be appealed under Article 63 of the Firearms (Northern Ireland) Order 2004 but appeals prove extremely difficult to achieve. Mr McCrea wished to see the introduction of a tariff that was varied to reflect more accurately the seriousness of the offence rather than those convicted of a non-violent offence receiving the same tariff as those convicted of violent/serious offences. In his view this would provide for a fairer system.
  24. The Committee sought the views of the Department on the proposal. The Department indicated that a difficulty in moving to an offence based approach, as proposed by Mr McCrea, was the problem of "ranking" offences and the development of such an approach would, in its view, be likely to require significant work. It also pointed out that any changes would require the agreement of the Secretary of State for Northern Ireland as prohibitions for offences relating to national security are referred to her for consideration. The Department suggested that if the Committee concluded that Article 63 required reviewing then a consultation should be conducted to allow the Minister and others to give serious consideration to the proposal and what could be very significant consequences.
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25. The Committee noted the position of the Department on this matter and agreed to consider the proposal further once the consultation being undertaken on a range of issues relating to firearms, including fees, by the Department has been concluded in February/March 2013 rather than in the context of this Bill.

**New Provision proposed by the Committee**

26. The offence of scandalising the court, also known as scandalising judges or scandalising the judiciary, is a form of contempt of court. The rationale for such an offence derives from the need to uphold public confidence in the administration of justice.
27. In March 2012 the Attorney General for Northern Ireland brought a prosecution against Peter Hain MP for the common law offence of scandalising the court for statements he made in his book 'Outside In' in which he criticised a judge. The prosecution attracted significant media and political interest at the time with questions being raised regarding the right to freedom of expression and such criticism being regarded as "political speech" and therefore, under the European Convention on Human Rights, subject to the highest degree of protection, although not absolute and whether the offence was obsolete. The Court was invited to make no order after Mr Hain clarified the intention behind his remarks.
28. The prosecution prompted an amendment to be laid in the House of Lords in relation to the Crime and Courts Bill proposing the repeal, without replacement, of the offence of scandalising the court for England, Wales and Northern Ireland. The amendment, brought forward by Lord Pannick QC, was subsequently withdrawn at Committee Stage to allow the Government time to consider the matter.
29. The Minister of Justice wrote to the Committee in September 2012 informing it that the Minister of State, Lord McNally, had advised that, having considered and consulted on the issue the Government was minded to support the amendment and wished to know if Northern Ireland wanted to be included in it. The Minister reminded the Committee of his preference for local legislation and indicated that he considered that it would be more appropriate for this matter to be looked at separately in a Northern Ireland context. He had therefore advised Lord McNally that Northern Ireland should not be included in the Crime and Courts Bill and had asked his officials to take forward work to seek views on this in Northern Ireland. When asked by the Committee for the timescale for completion of this work the Minister indicated that, subject to any other competing priorities, he planned to take forward a consultation on the issue in the New Year.
30. The Committee considered the matter and was of the view that the Criminal Justice Bill could provide an appropriate vehicle in which to take forward the repeal of this offence. The Committee agreed that an amendment should be drafted on this basis and advice sought on whether such an amendment would fall within the scope of the Bill. The Committee also agreed to seek the views of the Attorney General for Northern Ireland given his interest in the matter and noted the results of the consultation undertaken by the Law Commission in England and Wales in which there was general support for abolition of the offence in those jurisdictions.
31. While noting the response from the Attorney General in which he outlined that, in his view, the Criminal Justice Bill may provide an opportunity to recast scandalising contempt in statutory form rather than repealing the offence, the Committee agreed that it wished to see the offence of scandalising the court abolished in Northern Ireland and was content with the amendment as drafted. Given that there may be an issue with the admissibility of the amendment in relation to this Bill the Committee agreed to write to the Speaker prior to Consideration Stage and seek his view before tabling it. If the amendment is deemed not to be admissible in this Bill the Committee will take the issue forward in the Faster, Fairer Justice Bill which the Minister intends to introduce into the Assembly in 2013.

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## Introduction

32. The Criminal Justice Bill was introduced in the Northern Ireland Assembly on 25 June 2012 and was referred to the Committee for Justice for consideration in accordance with Standing Order 33 (1) on completion of the Second Stage of the Bill on 3 July 2012.
33. At introduction the Minister of Justice made the following statement under section 9 of the Northern Ireland Act 1998:
- 'In my view the Justice Bill would be within the legislative competence of the Northern Ireland Assembly.'*
34. The Bill has 10 clauses and 4 schedules covering three policy areas. The Bill proposes to: change the law on sex offender notification provisions; introduce new offences aimed at preventing and combating human trafficking and protecting its victims; and establish a new legislative framework for fingerprints and DNA samples and profiles.
35. Clauses 1 to 4 and Schedule 1 of the Criminal Justice Bill deal with sex offender provisions, specifically the review of indefinite offender notification requirements; ending of notification requirements for acts which are no longer offences; offences committed in a European Economic Area State other than the United Kingdom; and sexual offences prevention orders. Clauses 5 and 6 of the Criminal Justice Bill create two new offences relating to trafficking people for sexual exploitation and trafficking people for other exploitation. Clause 7 of the Bill and Schedules 2 and 3 insert into PACENI the new framework governing the retention and destruction of fingerprints, DNA samples, etc. and makes consequential amendments. It also requires the Department to make an order containing transitional or saving provisions associated with the coming into force of that Clause, and the repeals in Part 2 of Schedule 4.
36. During the period covered by this report, the Committee considered the Bill and related issues at 14 meetings. The relevant extracts from the Minutes of Proceedings are included at Appendix 1.
37. The Committee had before it the Criminal Justice Bill (NIA 10/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill.
38. At its meeting on 13 September 2012 the Committee agreed a motion to extend the Committee Stage of the Bill to 14 December 2012. The motion to extend was supported by the Assembly on 24 September 2012.
39. In addition to publishing a media sign posting notice in the Belfast Telegraph, Irish News and Newsletter seeking written evidence on the Bill, the Committee targeted key stakeholders inviting their views. Stakeholders were asked to structure written submissions to address the specific clauses of the Bill. In response to its call for evidence, the Committee received 27 written submissions, 21 of which provided substantive commentary on the three policy areas covered in the Bill. Copies of the written submissions are included at Appendix 3.
40. The Committee was first briefed by departmental officials on the principles and final content of the Criminal Justice Bill on 28 June 2012. In addition to further briefings from departmental officials on each policy area, the Committee took oral evidence from 8 organisations. The Minutes of Evidence are included at Appendix 2 and a list of witnesses who gave oral evidence is at Appendix 7. The written and oral evidence raised a number of issues and concerns, particularly in relation to Human Trafficking and the proposed new Fingerprint and DNA retention framework. The Committee explored these with the Department both in writing and in oral evidence sessions. Correspondence and papers from the Department of Justice are included at Appendix 5.

41. The Committee also commissioned a number of research papers from Assembly Research Services to assist its consideration of the Bill and in particular issues relating to Human Trafficking. The research papers are included at Appendix 4.
42. The Committee sought advice from the Examiner of Statutory Rules in relation to the range of powers within the Bill to make subordinate legislation. The Examiner considered that most of the delegated powers were appropriate but drew to the attention of the Committee the provisions in Article 63D(5) of PACE as inserted by Schedule 2. The Examiner was of the opinion that this is a substantive amendment of primary legislation, and therefore prescribed circumstances relating to the application for the Commissioner's consent to retain fingerprints and DNA profiles should be set out on the face of the Bill with power to amend by way of subordinate legislation subject to affirmative resolution if necessary. This issue is covered in the main body of the report.
43. The Committee also consulted the Attorney General for Northern Ireland on a proposed amendment the Committee was considering introducing at Consideration Stage to abolish the offence of Scandalising the Court. Correspondence from the Attorney General is at Appendix 6.
44. The Department informed the Committee of a number of new provisions it intends to bring forward at Consideration Stage and the Committee briefly considered the merits of each of them. The new provisions relate to notification requirements for sex offenders who travel within the United Kingdom; the issue and withdrawal of notices in relation to the examination of vulnerable defendants through a Registered Intermediary; and licence arrangements relating to the release of young offenders convicted of certain serious crimes.
45. The Committee carried out informal clause by clause deliberations at its meetings on 8, 15 and 22 November and 4 December and undertook its formal clause by clause scrutiny of the Bill on 6 December 2012.
46. At its meeting on 13 December 2012 the Committee agreed its report on the Bill and ordered that it should be printed.

## Consideration of the Bill

47. In response to its call for evidence, the Committee received 27 written submissions and took oral evidence from 8 organisations. The written and oral evidence raised a number of issues and concerns, particularly in relation to Human Trafficking and the proposed new Fingerprint and DNA retention framework. The Committee explored these with the Department both in writing and in oral evidence sessions.

### Sex Offender Provisions

48. Clauses 1 to 4 and Schedule 1 of the Criminal Justice Bill deal with sex offender provisions, specifically the review of indefinite offender notification requirements; ending of notification requirements for acts which are no longer offences; offences committed in a European Economic Area State other than the United Kingdom; and sexual offences prevention orders.
49. A number of general comments were made on this part of the Bill together with specific comments relating to a particular clause or the Schedule.

### General Comments

50. The Northern Ireland Policing Board expressed the view that sexual offences are very serious crimes that blight the community and tackling them requires a multi-agency approach which would be arguably enhanced if a statutory duty was placed on public bodies, including the police, to have due regard to the likely effect on crime and anti-social behaviour when exercising their functions.
51. The Policing Board highlighted that such a duty was originally included at Clause 34 of the Justice Bill but was subsequently removed from the Bill because of concerns around the workings of the principle, specifically the wide scope of the Clause and the corresponding potential for costly legal challenges.
52. The Policing Board would like to see an amendment to the Criminal Justice Bill to include a 'Clause 34' type duty on public bodies to come into force on a day the Department of Justice, by Order, appoints, with the order containing such transitional, transitory or savings provisions as the Department thinks appropriate. The Board highlighted that this would give the Department and the Committee for Justice time to consider the specific workings of the duty but would reduce delay in implementing the provision once the finer details were agreed.
53. The Policing Board felt that, given the concerns regarding the potential for costly legal challenge and the enforceability of such a duty, consideration should be given to introducing a complaints type mechanism for aggrieved individuals which would, at least in the first instance, avoid the need for that individual to seek a judicial remedy.
54. The Department, in response, clarified that the Justice Bill 2010 had included a provision (known as Clause 34) to ensure that public bodies exercised their functions with 'due regard to the likely effect of the exercise of those functions on crime and other antisocial behaviour in that community, and the need to do all that [they] reasonably can to enhance community safety'. While District Policing Partnerships and Community Safety Partnerships (PCSPs), as well as other key bodies such as the Policing Board and the PSNI, expressed strong support for the proposed provision it was not supported by the Committee for Justice.
55. As outlined in the report on the Justice Bill<sup>1</sup> published in February 2011, the Committee had serious reservations about the implications of the statutory duty that the proposed provision would place on public bodies and shared the concerns of the Attorney General regarding the

<sup>1</sup> <http://www.niassembly.gov.uk/assembly-business/committees/2007-2011/committee-for-justice/reports/>

wide scope of the Clause and the corresponding potential for legal challenges which could potentially be very costly without necessarily generating positive outcomes in improved policy making by the various public bodies. In the absence of a satisfactory amendment to address the concerns, raised the Committee did not support the proposed Clause 34 provision.

56. The Committee did however recommend the inclusion of a provision to designate key bodies onto PCSPs, ensuring that organisations with a strong contribution to make to enhancing community safety, such as the PSNI and the Housing Executive, got involved in the work of PCSPs.
57. The Department highlighted that these bodies are already involved in the work of PCSPs, and an Order putting this on a statutory footing will be brought forward in late 2012/early 2013. The Department is of the view that it would be useful to consider the effectiveness of this power before considering the introduction of any provision similar to 'Clause 34'. The Department also indicated that the management of risk from sexual offending is already a multi-agency function under Articles 49 to 51 of the Criminal Justice (Northern Ireland) Order 2008.
58. The Policing Board also raised the issue of Violent Offender Orders (VOOs) which were included in the Department's public consultation on proposals relating to sex offender notification changes. VOOs place restrictions on offenders who pose a risk of very serious violent harm and are viewed by the PSNI as a potentially particularly useful tool in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes. The Board highlighted that the Department had indicated that VOOs would be included in future legislation but it felt that provision for VOOs should be included in the Criminal Justice Bill on the basis that the relevant provisions would not come into force until such day as the Department may by Order appoint.
59. The Department indicated in its response that legislation for VOOs would be brought forward in the Faster, Fairer Justice Bill.
60. **The Committee noted the intention of the Department to include the relevant legislative provision in the Faster, Fairer Justice Bill which is due in 2013.**
61. The Probation Board for Northern Ireland (PBNI), in its submission, highlighted that the Department of Justice consultation exercise included a proposal to amend Part 2 of the Sexual Offences Act 2003 whereby an offender, who was subject to notification requirement, would have to notify the PSNI if they resided in a household where there was a child under 18. The Probation Board supported this proposal and questioned why it did not appear in the Bill.
62. In response the Department indicated that provision for this proposal would be made by new regulations under Section 83(5) of the Sexual Offences Act 2003.
63. **The Committee, noting that it would have the opportunity to scrutinise the secondary legislation in due course, was content with this approach.**
64. The Probation Board also sought clarification on the omission from the Bill of a requirement on qualifying offenders to notify on a weekly basis, their whereabouts, if they had no fixed abode, which was covered in the Department's consultation exercise. The Probation Board was of the view that certain exceptions, for example for offenders residing in hostels or in hospital care, would be a useful requirement.
65. **The Department again indicated that provisions for this proposal would be made by way of secondary legislation under Section 85(5)(a) of the Sexual Offence Act 2003 and the Committee was content with this approach.**

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## Clause 1 and Schedule 1 – Review of Indefinite Offender Notification requirements

66. Evangelical Alliance welcomed the implementation of a review mechanism to allow offenders who are subject to an indefinite period of notification under Part 2 of the Sexual Offences Act 2003 to apply to have the requirements lifted and viewed it as being reflective of the fact that an individual could change and that no one is beyond redemption. However, in order to protect the vulnerable, it suggested the retention of powers to initially place dangerous individuals on the register for life subject to review mechanism after a defined period. In every case Evangelical Alliance suggested a thorough review by a relevant psychiatric expert before someone is removed from the register meaning that individuals are not simply removed from the register after an arbitrary period even when they still present an identifiable threat to others.
67. The Department highlighted that there was no change to the existing requirement to notify for an indefinite period if sentenced to longer than 30 months imprisonment. It also clarified in its response that discharge would be on the basis of a multi-agency assessment of risk, including, where appropriate, mental health input.
68. The National Society for the Prevention of Cruelty to Children (NSPCC) stated in its evidence that, despite all attempts at rehabilitation, some offenders would remain a significant risk for the duration of their lives. The NSPCC was of the view that where a paedophile had sexually abused a child, registration should be for life.
69. The Department clarified that the requirement to notify for an indefinite period continues and that discharge from that requirement would only result if risk assessment showed no need to continue to notify.
70. The NSPCC highlighted that, in respect of the review of indefinite offender notification requirements, an important safeguard would be to update the Public Protection Arrangements Northern Ireland (PPANI) Manual of Practice to allow for a qualifying offender to be brought into assessment and risk management arrangements if there were future concerns.
71. The Department confirmed that the PPANI guidance to agencies and manual practice already stipulates that a sex offender who is not subject to notification could be assessed under the PPANI arrangements at any time an agency has concerns regarding risk.
72. The NSPCC referred to the time periods attached to the initial review of lifetime notification applications for offenders under 18, and those who are 18 and over, and expressed its support for special measures for young people. It highlighted that, while young people will have committed a very serious offence in the first instance to acquire this level of notification requirement, it supported difference of treatment for this age group. It also highlighted that research has shown that treatment provision can be successful with young people and most young people who demonstrate harmful sexual behaviour do not go on to become adult sex offenders.
73. The NSPCC noted that under the Sexual Offences Act 2003, children who have committed a sexual offence are subject to the same notification requirements as adults. Although the length of their notification period is automatically halved, and they have the possibility of varying a notification direction, the NSPCC felt that this did not go far enough in recognising and attempting to meet the rights, needs and vulnerabilities which are specific to children. It felt that no consideration was being given to how such requirements might affect the lives of young people, how regular contact with criminal justice agencies might lead to them being stigmatised at a young age, or to how the notification requirements could be tailored to better fit in with the reality of children's everyday lives, e.g. in relation to their attendance at school and their widespread use of social networking sites. The NSPCC was of the view that the current requirements did not constitute a child centred and welfare-based approach to their management.
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74. On a wider issue the NSPCC suggested that consideration should be given to whether a review should be conducted into the effectiveness, proportionality and impact of the current and proposed notification requirements on young people who have sexually offended.
75. The Department indicated in its response that the NSPCC comments pertained to a more fundamental issue in relation to the operation of the legislation as a whole and they could not be addressed in the context of the changes proposed in the Criminal Justice Bill.
76. The Northern Ireland Human Rights Commission (NIHRC) noted that the Bill would reform the framework for the notification requirements for sex offenders and highlighted that its main issue for consideration, in respect of the framework, was whether the proposed amendments would ensure that the degree of interference with an individual's right to private life was proportionate.
77. The NIHRC acknowledged that the assessment of whether the measure is proportionate and necessary in a democratic society was complex however it felt that this was the principal issue for consideration with respect to sex offender notification arrangements.
78. The NIHRC highlighted that, in assessing the issue of proportionality, it must be ensured that the reforms are grounded on a solid evidential basis which demonstrates that the measures will achieve the legitimate aims which they pursue without arbitrarily impacting on individuals' human rights.
79. The NIHRC stated that it had reviewed the provisions of the Bill relating to the notification requirements placed on sex offenders and concluded that the introduction of a procedure which would allow those under notification requirements to apply to the Chief Constable, and if they were unsuccessful to the Crown Court, to have their notification requirements discharged on the grounds that they were no longer a danger to the public, appeared to ensure that the interference with the individual's right to private life was proportionate.
80. The NIHRC highlighted that, in considering the proportionality of this measure, it was important to note the risk posed to the public. It also highlighted that the risk of harm to the public posed by sex offenders was significant and protective measures were required. It referred to the obligations international human rights law places on states to protect citizens from harm and noted that there were specific obligations in respect of vulnerable groups. It pointed out that the UN Committee on the Elimination of Discrimination Against Women had made specific reference to states' obligation to protect women against sexual violence:
- 'States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention'.*
81. It also pointed out that the United Nations Convention on the Rights of the Child (UNCRC) at Article 34 places a specific duty on the State to protect children from all forms of sexual abuse and exploitation.
82. The NIHRC indicated that the need to protect the public must be balanced against the rights of the offender and expressed the view that the amendments contained within this Bill at Clause 1 and Schedule 1 appeared to address the two issues.
83. The NIHRC sought further information on how the periods of time which must elapse before a review is permitted had been determined and what evidential basis informed this decision. It noted that the provisions with regard to the application process appeared to comply with the applicants' right to a fair trial as protected by Article 14 of the International Covenant on Civil and Political Rights (ICCPR) and Article 6 of the European Convention on Human Rights (ECHR).



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84. The Department's response indicated that 15 years from the date of leaving prison was a fair and appropriate period to expect an offender to be in the community, and would allow for more accuracy in the risk assessment process. Also, fixed periods of notification extend to 10 years without review, so a review for indefinite periods cannot take place until an appropriate period had elapsed after the 10 year mark. The further review period had been proposed at 8 years as a more appropriate time frame for second review and to allow for parity with other UK jurisdictions. The period for under 18s conforms to the policy in the Sexual Offences Act 2003 which attaches notification requirements at a 50 percent reduced rate for under 18s. The Department clarified that the Bill did not provide for the police to extend the further review period and that all cases would be risk assessed individually before any determinations would be made to discharge notification.
85. The NIHRC also sought information on what assistance would be available to an individual when preparing their application and what forms of evidence the Chief Constable or Crown Court would require.
86. The Department stated that the preparation of an application was the responsibility of the offender and the offender may give such information as he wishes to be taken into account and the Chief Constable must take that into account. The Department also highlighted that the Crown Court makes a determination on the same basis as the Chief Constable.
87. The Policing Board highlighted that the mechanism for the review of indefinite notification requirements for sexual offences had implications for policing, not least because it specifies that it is the Chief Constable to whom an application for a review must be made.
88. The Department estimated that the police would have to make determinations on an average of 20 applications per year.
89. Disability Action raised a number of issues in relation to Schedule 1. It highlighted that Schedule 1(2)(6) states that 'an application under this paragraph must be in writing'. Disability Action commented that the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD), of which the UK is a signatory, notes in Article 21(b) that states agree to: 'Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;' and under Article 4 1(a): 'To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention'.
90. It also highlighted that the form of communication to be used by the Chief Constable to acknowledge receipt of the application to the offender is not prescribed in Schedule 1 (7) and suggested a different form of words to reflect the comments of the UNCRPD, while maintaining the need for records to be kept such as 'an application under this paragraph must include ...'. Disability Action felt that this would provide the details required without being prescriptive about the communication method used.
91. The Department highlighted in its response that Disability Action's recommendations would be difficult to apply in practical terms. However, it pointed out that the legislation did not require the written application to be made by the applicant. Where disability prevented an applicant making a written application, the Department envisaged a third party being involved. It indicated that this matter could be dealt with in the guidance to be provided.
92. Disability Action was also unclear why the undefined term disability had been specifically included as a ground for the Chief Constable to consider in Schedule 1 (3)(2)(iii). It was of the view that unless disability on the part of the offender was part of the original offence, then matters in relation to capacity at the time of the offence could be adequately dealt with under paragraph 2(L) of the Bill. To include disability as a specific mitigation measure without further definition linked disability with offending and unless there were specific reasons for its inclusion, it recommended its removal.
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93. The Department indicated that there appeared to be a misunderstanding of the provision by Disability Action and the Chief Constable must take account of the seriousness of the offence which the person was convicted of, or, if not convicted, was found to be under a disability and have done the act charged, and which led to notification. The notification is attached by the Sexual Offences Act 2003 which refers to whether the person was convicted, found to be insane, or found to be under a disability and to have done the act charged.
94. The NSPCC referred to the factors for the Chief Constable to consider when arriving at a determination to deregister an individual as set out in Schedule 1 (3)(2) (a) to (n). The NSPCC suggested the following further factors for inclusion in the legislation or guidance:
- The need for the welfare and protection of the victim(s) to be paramount;
  - In cases involving sex offenders who have abused children, child protection and safeguarding must be a prime consideration and the Chief Constable's assessment of a sex offenders application to be removed from notification arrangements should include views and evidence from children's social care professionals and any views from victims as appropriate;
  - Risk assessments must be informed by empirical, objective evidence, and any decision taken based on transparent and clear criteria. Decisions taken must be well documented;
  - Risk assessments for the purposes of considering deregistration should not be based on absence of evidence that a risk exists but rather on positive evidence that the risk once posed by the offender has been substantially reduced, and that the offender poses no current or future risk to the public.
95. In its response the Department clarified that the relevant issues would be included in the risk assessment process prior to the determination of an application and would also be clarified in guidance.
96. It highlighted that discharge would not take place if an offender continued to pose a risk of harm which justified notification and the police would make a determination on the basis of an assessment of the evidence required at para 3(2).
97. The NSPCC stated that it was helpful that Schedule 1 (7)(1) provided for statutory guidance to be produced on the issue and process, however, it expressed the view that it would like to see the welfare and protection of children being paramount including the development of guidance for dealing with situations where an agency or agencies have a contrary view to the police that an individual continued to pose a risk.
98. This Department highlighted in its response that this aspect needed some further clarification but the NSPCC and other stakeholders would be consulted in relation to the development of the guidance.
99. **The Committee noted the issues raised in the evidence in relation to Clause 1 and Schedule 1 and the responses from the Department.**
100. **Some Committee Members indicated that they would support the inclusion of the proposed provisions in the Bill for a review of indefinite sex offender notification requirements only on the basis that legislative change is required to ensure Northern Ireland complies with the 2010 Supreme Court ruling in the case of *R and Thompson*. Some Members had opposed a similar provision during the passage of the Justice Bill 2010 through the Assembly, and it was noted that there have been a number of changes made since then which were to be welcomed.**

### Clause 3 – Offences Committed in an EEA State other than the United Kingdom

101. Clause 3 of the Bill as introduced places statutory notification requirements on offenders with convictions from another EEA state who come to Northern Ireland for a period of more than seven days. The limitation to EEA states was included in the provision on the advice of the Attorney General, whose view it was that the Bill would not be compliant with ECHR obligations, and would therefore be outside Assembly competence, if the statutory requirement was placed on offenders from all states outside the UK. The Attorney General's advice was based on the possibility that an individual from a state with poor human rights standards may have been convicted of a sexual offence by virtue of human rights abuses or a gross miscarriage of justice.
102. During the Minister of Justice's speech at Second Stage of the Bill, he highlighted that the Executive had made it clear that it could not support the introduction of the Bill unless the Minister gave a commitment to bring forward an amendment to Clause 3 to allow for a single, enhanced process for attaching notification to offenders with convictions from outside the UK. He therefore intended to bring forward such an amendment and indicated that his Department would work with the Attorney General's Office and the Committee during the passage of the Bill to achieve that end.
103. The Department subsequently provided the Committee with information on options it had considered together with reasons for and against their adoption to address both the Attorney General's concerns and those expressed by the Executive.
104. The Department discussed the options with the Attorney General and he had recommended the following procedure as being ECHR compliant and which also appeared to address the concerns of the Executive:
- There will be one procedure for offenders in Northern Ireland with convictions from countries outside the UK.
  - The procedure will place a statutory requirement on such offenders to notify the police after being in residence in Northern Ireland for 7 days. Offenders will have three days to make that notification.
105. Under the new arrangements the following safeguards will apply:
- It will be a defence to any charge of failure to comply with notification to prove that the original conviction, which is the basis for notification, fell so short of convention standards that the court cannot be satisfied that it can safely be relied on as evidence that the person committed the offence.
  - There will also be a right of application to the High Court for removal of the requirement to notify if the person can prove that the original conviction, which is the basis for notification, fell so short of convention standards that the court cannot be satisfied that it can safely be relied on as evidence that the person committed the offence.
106. The Department clarified that an offender could choose to comply with notification and then seek to have the requirements discharged by the court if he believed that his conviction from the other country was obtained by abuse of Convention rights. Similarly if an offender was charged with an offence of failure to comply he could deploy the defence to prove his conviction is unsafe.
107. **The Committee was content that the twin approach addressed the issues raised by both the Attorney General and the Executive and, having considered the wording of the proposed departmental amendment in relation to offences committed in an EEA State other than the United Kingdom, agreed it was content to support its inclusion in the Bill.**

108. In relation to Clause 3 the NIPB noted that the police would no longer be required to apply to court for a notification order in respect of such persons and this ought to, in theory, deliver a cost saving and reduce bureaucracy. However, it questioned how a failure to notify the police within 3 days would be identified and enforced and how relevant persons from EEA countries would be made aware of their obligation to notify the police. It also questioned whether there were any language/literacy/communication considerations in this regard.
109. In response the Department indicated that other police services may share information with the PSNI if they know an offender is travelling to Northern Ireland. However, it stated that there could be no guaranteed way to ensure that the police would be alerted. The Department informed the Committee that the PSNI were working with the Garda to ensure that offenders from the Republic of Ireland would be informed of their obligations if they came to Northern Ireland. It acknowledged that offenders from other jurisdictions would not always know of the obligations in advance of coming to Northern Ireland but stated that if the police became aware they would immediately be informed and would then have to notify straight away, or risk arrest and prosecution. The Department also clarified that issues regarding language/literacy/communication would be addressed in guidance.
110. The NSPCC highlighted the importance of the new provision requiring qualifying offenders to notify the police on entrance to Northern Ireland. It referred to the current onus on the police to find and require an offender to register and apply for a notification order. It felt that this placed additional unnecessary responsibility on the police and could be problematic where an individual enters the jurisdiction unknown to the authorities. It highlighted the position in the Republic of Ireland where the Sex Offenders Act 2001 requires that the individual registers with the authorities on entry to the country and indicated its support for what it believed to be a very sensible provision. The NSPCC also sought clarification on the extent of any qualifying offence outside of the jurisdiction.
111. The Department clarified that the extent of any qualifying offence outside the jurisdiction meant all sexual offences under the law in another State which would have constituted an offence under Schedule 3 to the Sexual Offences Act 2003.
112. The Public Prosecution Service (PPS) raised a drafting issue in its evidence. It noted that Clause 3 inserts a new section 96A into Part 2 of the Sexual Offences Act 2003 relating to 'Offences committed in an EEA State other than the United Kingdom'. It indicated that a section 96A already exists in the Sexual Offences Act 2003, although it applies only to Scotland, referring to 'powers of entry and examination of home address', which was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006.
113. The Department acknowledged the drafting error and advised the Committee that it intended to bring forward an amendment at Consideration Stage to correct the error.
114. **The Committee considered and agreed that it was content with the proposed departmental amendment to amend the drafting error and would support its inclusion in the Bill.**

#### Clause 4 – Sexual Offences Prevention Orders

115. The NI Policing Board noted that Clause 4 of the Bill amends the Sexual Offences Act 2003 so that a person subject to a Sexual Offences Prevention Order (SOPO) can be required to undertake a particular action and a person would commit an offence if, without reasonable excuse, they failed to do anything which was required by the SOPO. The NIPB highlighted that any such positive obligations imposed must be lawful, proportionate and necessary, and something which the police must bear in mind if suggesting conditions on application to the court for a SOPO in respect of a sex offender.
116. The NSPCC stated in its evidence that the provision of SOPOs had become an important tool for agencies involved in Public Protection but highlighted that they were framed in such a way

in the Sexual Offences Act 2003 that they restricted what an individual could not do. The NSPCC welcomed a move to issue positive requirements and felt that this should work well, for example, in relation to accommodation requirements and where an offender is required to live or to compel an offender to undergo an anger management course.

117. The Department highlighted in its response that the court makes decisions on what is lawful, proportionate and necessary in accordance with the existing legislation.
118. **The Committee was content to support the inclusion of Clause 4 in the Bill.**

### Additional clause: Notification Requirements for Sex Offenders who Travel within the United Kingdom

119. The Department advised the Committee in a letter dated 1 November 2012 of its intention to introduce an additional sex offender notification clause to the Bill at Consideration Stage which would make it necessary for a sex offender to notify the police if he planned to be away from his home address for more than three days without leaving the UK.
120. The proposal would amend the Sexual Offences Act 2003 to require a relevant offender to notify the police as soon as reasonably practicable, but not less than 12 hours before leaving his home address, of periods when he planned to be away from his home address, but within the UK or Ireland, for more than three days. The information to be provided would include the date or dates of departure; method of travel; initial destination and any subsequent places of stay, along with intended dates; accommodation arrangements; and date or dates of return.
121. The Department indicated that there is currently no provision which requires a relevant offender to provide information to the police if he intends to leave his home address for any period of time to travel within the UK where he does not remain at another address for a qualifying period.
122. The PSNI had asked for consideration to be given to including such a provision which would require offenders who travel within the UK to notify the police of their planned whereabouts/itinerary to address what is perceived to be a loophole in the current legislation where a sex offender could use a series of addresses for up to 6 days in each case, without notifying the police.
123. The PSNI brought this issue to the Department's attention because of an offender it had difficulty keeping track of who had travelled around the UK but did not stay at one address long enough to have to notify under the current qualifying period of seven days at another address.
124. In its oral evidence to the Committee the PSNI pointed out that the legislation on foreign travel made it more difficult for offenders to travel abroad to offend, but did not adequately deal with travelling within the UK to offend. It referred to a case whereby one particular offender travelled to England for a number of weeks using a touring caravan and the police did not know where he was, and were not entitled to know under current legislation.
125. The Department advised the Committee that this proposal was unique to Northern Ireland. It had consulted with colleagues in England and Wales and in Scotland, but the matter had not been raised as a particular issue by the police forces in those jurisdictions. It highlighted however that a change in the law in Northern Ireland may spark interest in the other jurisdictions.
126. The Department informed the Committee that it also intended to bring forward secondary legislation in relation to foreign travel requirement so that an offender would have to notify all travel outside of the UK and not just travel of three days or more. The Department advised the Committee that travel to the Republic of Ireland would be excluded as such a requirement for cross border travel would be impractical. Notification of cross border travel would remain

unchanged at three days under the requirement to notify absences from home for three days or longer.

127. **The Committee noted that, under the current provisions, relevant offenders must notify the police when they intend to travel for more than three days outside of the UK or, where they have stayed at an address within the UK which is not their home address for a period of seven days or two or more periods in any 12 months which add up to seven days, the address of those other premises.**
128. **The Committee accepted the need for the proposed new provision and welcomed the fact that this would develop and strengthen the policy further in relation to the notification requirements and provide greater public protection. Following consideration of the wording of the draft amendment the Committee agreed that it was content to support the inclusion of the new clause in the Bill.**
129. **The Committee also noted the Department's intention to bring forward secondary legislation, which would be subject to Committee scrutiny, to require an offender to notify all travel outside of the UK and not just travel of three days or more.**

## Trafficking People For Exploitation

130. Clauses 5 and 6 of the Criminal Justice Bill create two new offences relating to trafficking people for sexual exploitation and trafficking people for other exploitation. Generally respondents welcomed the introduction of the new offences provided for in Clauses 5 and 6 although some issues were raised regarding the level of sentences that could apply. In the main those organisations that provided evidence to the Committee on this part of the Bill concentrated largely on issues not covered in the Bill or those covered in provisions in Lord Morrow's draft Private Members' Bill.

## Issues raised relating to Clauses 5 and 6 of the Bill

131. The Northern Ireland Council for Ethnic Minorities (NICEM) noted in its evidence that Clause 5 inserted a new section 58A into the Sexual Offences Act 2003 to create an offence where a person is trafficked for sexual exploitation into, within and out of countries outside the UK. It highlighted that, in terms of the actions of an accused trafficker, Section 58A (1)(a) suggests 'arranges' or 'facilitates' will be enough to commit an offence. NICEM was of the view that this was not in line with the language of the Directive and felt that it may be open to litigation and could be the subject of judicial interpretation. NICEM recommended, to ensure that the Northern Ireland legislative framework was in line with the EU Directive, that the words 'arranges or facilitates' should be replaced with the following:

*'The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'.*

132. In response, the Department clarified that the new extra-territorial offence was drafted in a similar style to the existing sexual exploitation trafficking offences under the 2003 Act of trafficking into (section 57), within (section 58) and out of (section 59) the UK. These offences are to be interpreted using section 60 of the 2003 Act, which sets out certain relevant sexual offences for the purposes of trafficking for sexual exploitation. The relevant offences include sexual offences under the Sexual Offences (Northern Ireland) Order 2008 ("the 2008 Order"), sexual and violent crimes under Schedule 1 of the Criminal Justice (Children) (Northern Ireland) Order 1998 and the offence of taking indecent photographs of children contrary to article 3 of the Protection of Children (Northern Ireland) Order 1978. The intentional human trafficking acts in Article 2(1) of the Directive were covered.

133. The Department highlighted that the ‘arrange and facilitate’ approach had been continued in England and Wales and had been incorporated into the new section 59A of the 2003 Act by section 109 of the Protection of Freedoms Act 2012. It highlighted that the Scottish approach was the same and could be found in section 22 of the Criminal Justice (Scotland) Act 2003, as amended by section 46 of the Criminal Justice and Licensing (Scotland) Act 2010. The Department was content that there is a consistent approach within the equivalent UK legislation.
134. The Department also clarified that there were no reported cases that highlighted a problem with the interpretation of ‘arrange and facilitate’ in dealing with prosecutions under the legislation.
135. **The Committee welcomed the introduction of the new offence and noted that there is a consistent approach within the equivalent legislation in England and Wales and in Scotland in relation to the use of ‘arrange and facilitate’ and there had been no reported cases of problems regarding interpretation.**
136. NICEM also raised the issue of sanctions for legal persons and highlighted that Clause 5 (1) (3) of the Bill sets out the penalties for persons guilty of an offence but does not include penalties for legal persons, despite the fact they are covered by Clause 5(1)(2)(e) of the Bill. NICEM highlighted that Article 6 of the EU Directive suggests sanctions for legal persons such as judicial winding-up and disqualification and suggested that it may be useful for the legislature to consider such options as the Bill should include sanctions against legal persons.
137. The Department pointed out that the 2003 Act and the 2004 Act refer to persons who commit the relevant offences and that Clauses 5 and 6 of the Criminal Justice Bill make provision for the liability of persons who commit offences in countries outside the United Kingdom. It highlighted that this legislation, which extends to Northern Ireland, must be interpreted in accordance with the Interpretation Act 1978. A variety of interpretation definitions are set out in Schedule 1 to the Interpretation Act 1978. Schedule 1 (Words and expressions defined) includes the definition: ‘Person’ includes a body of persons corporate or unincorporate.” Where the 2003 Act and the 2004 Act refer to persons committing offences this includes companies. The Department was therefore of the view that the Bill is compliant with the ‘legal persons’ definition in Article 5 and with Article 6.
138. **The Committee noted the Department’s explanation.**
139. The PPS stated in its evidence that Clause 5 created a new offence of trafficking outside the UK for sexual exploitation, and as this new offence was a hybrid offence (triable either summarily or on indictment), it considered that, to ensure consistency with the existing trafficking for sexual exploitation offences, it needed to be added to the list of hybrid offences which the Director of Public Prosecutions may refer to the Court of Appeal if he considers that a sentence is unduly lenient.
140. **The Department indicated that the Minister intends, with the agreement of the Committee, to bring forward secondary legislation to add trafficking for non-sexual purposes to the schedule of offences referable to the Court of Appeal on the grounds of unduly lenient sentences and to make the new offence for trafficking for sexual exploitation fully referable.**
141. **The Committee was content with this position.**
142. NICEM highlighted in its evidence that Clause 6 of the Bill referred to the notion of exploitation but it was not defined in the Bill. NICEM and Care in Northern Ireland both recommended that a definition be included to reflect Article 2(3) of the Directive:

*‘Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or*

*practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs’.*

143. The Department stated in its response that there was a risk in being overly prescriptive as this could limit flexibility in dealing with individual cases, make it more difficult to respond quickly to changes in criminal behaviour and could provide criminals with a means to work around the legislation.
144. The Department had sought the views of the PPS on including definitions in Northern Ireland legislation. From a prosecutorial perspective, the PPS advised that the circumstances of a human trafficking case can vary greatly and the acts referred to in Articles 2.1 and 2.3 of the EU Directive would already be covered by the existing offences for England and Wales and Northern Ireland. It highlighted that there may be cases where the circumstances of the trafficking are more subtle and there may be no evidence of the means referred to in Article 2.1. The PPS noted that if Article 2.1 is included as a definition of trafficking or included in the definition of the offences then we may limit the offence with the result that it would be unable to prosecute trafficking in cases where there is no evidence of the means contained in the definition.
145. **The Committee welcomed the introduction of the new offence and accepted that the inclusion of a definition to reflect Article 2(3) of the Directive, could be limiting. The Committee noted that there were already existing offences in place covering the acts in Articles 2.1 and 2.3 of the EU Directive.**
146. NICEM also recommended that Article 2(4) of the Directive, which provides that the consent of the victim shall be irrelevant where exploitation has taken place, should be taken into consideration.
147. The Department in its response highlighted that the consent of the victim would be irrelevant where exploitation had taken place and this was covered in the PPS policy on trafficking offences in Northern Ireland.
148. **The Committee noted the position as set out by the Department.**
149. The NIPB raised an issue in relation to whether it was within the Assembly’s legislative remit to create an offence in respect of all British citizens, subjects and overseas territories citizens, particularly where they had no connection with Northern Ireland and no element of the unlawful act took place within Northern Ireland.
150. The NIHRC highlighted in its evidence that Article 10(1) (b) of EU Directive required the UK to establish jurisdiction over offences concerning trafficking in human beings where the offender is a UK national, including where the exploitation occurs outside the UK.
151. The Department clarified that the new offence involved trafficking outside the United Kingdom committed in whole or in part within Northern Ireland. It also highlighted that the Protection of Freedoms Act 2012 related to similar trafficking activity undertaken in England and Wales and Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010 had already established similar Scottish jurisdiction in respect of extra-territorial trafficking offences.
152. **The Committee noted the Department’s response.**
153. The NIPB stated that, as currently drafted, the Bill appeared to mean that if a British citizen living in London, not connected in any way with Northern Ireland, trafficked a person for exploitation purposes within Spain, they would be committing an offence under the law of Northern Ireland. It pointed out that if similar legislation was introduced in England and Wales, the same person living in London, trafficking in Spain, would also have committed an offence under the law of England and Wales and could thus, in theory, be prosecuted twice within the United Kingdom, albeit within two different legal jurisdictions, for the same unlawful act.



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154. The NIPB also questioned whether the new offences should be limited to apply to all persons who at the time of the offence are habitually resident within Northern Ireland, to bodies incorporated under the law of a part of the United Kingdom with a registered office address in Northern Ireland or to situations where part of the chain of events amounting to the offence take place within Northern Ireland e.g. an email making arrangements is sent from within Northern Ireland.
155. The Department clarified that the Criminal Justice Bill makes provision for jurisdiction in respect of offenders who are habitually resident in Northern Ireland in accordance with Article 10(2)(c) of the Directive 2011/36/EU, which is the same as the approach already adopted in Scotland.
156. CARE in Northern Ireland raised a practical point of implementation of extraterritorial jurisdiction in relation to how it will be decided where a UK citizen who has committed a trafficking offence abroad would be prosecuted in the UK given that there are different offences in the different UK jurisdictions, and in particular what factors will make it more likely that an offence is prosecuted in Northern Ireland.
157. The Department indicated in its response that that would be a matter for the prosecuting authorities in each jurisdiction to consider. It highlighted that provisions of the Criminal Justice Bill provide for jurisdiction over British citizens, persons habitually in Northern Ireland or companies registered in the UK in respect of sexual trafficking or labour exploitation activities undertaken by them in countries outside the UK.
158. The Department referred to Clause 5 of the Criminal Justice Bill which inserts into the Sexual Offences Act 2003 a new section 58A (“Trafficking outside the UK for sexual exploitation”). It also referred to Clause 6 of the Bill which introduces a similar extension of jurisdiction in what will be section 4(3A) (“Trafficking people for other exploitation”) of the Asylum and Immigration ( Treatment of Claimants, etc) Act 2004 (“ the 2004 Act”). The Department was of the view that these changes comply with the mandatory extension of jurisdiction required in respect of offenders who are nationals of a Member State and exercise the discretionary option to extend jurisdiction to companies established in and habitual residents living in the Member State.
159. **The Committee noted the position as outlined by the Department in relation to the extension of jurisdiction.**
160. Mindwise referred to the 2011 Trafficking in Persons Report - United Kingdom which highlighted that authorities have not convicted an offender for human trafficking in Northern Ireland, Wales, or Scotland and provided examples of sentences in England where the average sentence for traffickers convicted under its Sexual Offences Act was 3 years 8 months imprisonment and for those convicted under other laws the average was 2 years 6 months.
161. The Department informed the Committee that, between January 2012 and 1 October 2012, the PPS received 16 cases following investigation for human trafficking involving 25 suspects.
162. At 1 October, decisions had been taken in 14 cases involving 22 suspects and that there had been two convictions for human trafficking in Northern Ireland this year. On 25 April 2012, Matyas Pis was sentenced to 3 years imprisonment on a trafficking charge; 2 years imprisonment on two counts of controlling prostitution charges, to run concurrently and 18 months, concurrent to the other sentences, on assisting in the management of a brothel.
163. On 6 July 2012 three defendants were sentenced in the case of R v Rong Chen, Simon Dempsey and Jason Owen Hinton [2012] NICC 26. The first defendant Rong Chen was sentenced to 7 years imprisonment for the offence of trafficking, along with various other offences. Simon Dempsey, was sentenced for two counts of aiding and abetting the control of prostitution for gain and received a concurrent sentence of 9 months imprisonment on each count, for 3 counts of entering into an arrangement to control criminal property contained,
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- concurrent sentences of 3 months imprisonment were imposed on each count. Jason Owen Hinton was convicted of two counts of aiding and abetting the control of prostitution and received two concurrent Community Service Orders requiring 220 hours of unpaid work.
164. The Northern Ireland Association for the Care and Resettlement of Offenders sought clarification of the disposals that would be available to the courts for those found guilty of offences under the new legislation.
165. The Department outlined that a person guilty of an offence under section 58A of the Sexual Offences Act 2003 will be liable on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both; on conviction on indictment, to imprisonment for a term not exceeding 14 years. Also, a person found guilty of trafficking for sexual exploitation, a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order, and where the court considers that the offender poses a risk of serious harm, can attract either an indeterminate or extended custodial sentence, with future release determined by the Parole Commissioners. A person guilty of an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as amended, will be liable on summary conviction, to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum or both and, on conviction on indictment, imprisonment for a term not exceeding 14 years, to a fine or to both.
166. Evangelical Alliance expressed concern about the proposed sentence an offender could receive under summary conviction for the offences under trafficking people for exploitation in the Bill.
167. It highlighted that in the consultation document, it was proposed that 'someone found guilty of either offence would be liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both'. However it noted that in its current form the Bill would reduce this to a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum. It appreciated that trafficking is a complex offence and those involved will have varying degrees of criminal responsibility however it was concerned that someone convicted of a trafficking offence could be given solely a fine which seems disproportionately lenient given the gravity of the crimes and human rights abuses concerned.
168. The Department apologised to the Committee for the error in the consultation document. It should have read that the offence would be liable on summary conviction to a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.
169. The Department clarified that the sentence of up to 6 months on summary conviction for human trafficking offences in Northern Ireland is consistent with that available in England & Wales and Scotland. It pointed out that there is provision in England and Wales to extend the sentencing powers in the Magistrates' Courts in England and Wales from 6 months to 12 months. However, this has not been commenced and consequently the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provide for the penalty of 6 months, as is the case in Northern Ireland.
170. In its oral evidence the Northern Ireland Council for Ethnic Minorities also expressed concern about the length of sentences attached to trafficking offences.
171. When giving oral evidence to the Committee, Assistant Chief Constable Hamilton was questioned on whether the inclusion of a minimal custodial sentence for human-trafficking offences in legislation, rather than leaving it to sentencing guidelines, would act as an effective deterrent. The Assistant Chief Constable responded that it may do. However, from the PSNI's point of view, the making of laws and penalties and the subsequent application of them and sentencing were, in the first instance, for the Assembly, and, secondly, for the judiciary. The Assistant Chief Constable advised that the PSNI would collect the evidence in

the reactive phase and post-conviction, and work within it and highlighted that it was keen to minimise harm and manage risk. The Assistant Chief Constable expressed a view that minimal sentencing had a limited contribution to make in minimising harm and reducing risk because, generally speaking, in a liberal democracy, the key is not thrown away forever.

172. The Department highlighted that Article 4.2 of the EU Directive requires that Member States shall take the necessary measures to ensure, in certain circumstances set out in the Article, that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment. The maximum term of imprisonment in Northern Ireland under provisions in the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 is 14 years. In addition, trafficking for sexual exploitation is also a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order and so, where the court considers that the offender poses a risk of serious harm, can attract either an indeterminate or extended custodial sentence, with future release is determined by the Parole Commissioners.
173. **During the oral evidence session on 20 September, the Committee expressed concerns regarding the possibility that conviction of human trafficking offences would attract a sentence of less than six months or a fine and felt this did not reflect the gravity of the offences. The Committee questioned whether the Department had given any consideration to having a mandatory minimum custodial sentence included in the legislation.**
174. **The Department advised the Committee that the Minister fully supported the Committee's strongly held view that Northern Ireland should be seen as a hostile place for traffickers and noted that sentencing was one of the tools for tackling this crime. However, the Minister felt that sentencing in an individual case should be a matter for an independent judiciary. The Department highlighted that mandatory minimum sentences allowed no room for discretion and made no allowance for the exceptional case. The Minister also highlighted that minimum sentences could have unintended consequences, something which has been borne out by international experience.**
175. **The Department subsequently indicated that, in response to the concerns raised by the Committee, the Minister was considering whether there is a case to make these offences indictable only, which would mean that offences would be heard in the Crown Court, where the maximum term of imprisonment is 14 years. The Department clarified that if the Minister decides that he wishes to make human trafficking offences indictable only he would table an amendment to the Bill at Consideration Stage.**
176. **The Committee noted the Minister's position and agreed that the issue of sentences for human trafficking is an area of concern. Given that, as yet, there have not been many convictions for this type of offence, the Committee agreed to review the position and consider the matter further if it felt that sentencing did not reflect the seriousness of the crime. The Committee also agreed to consider the matter further when the Minister had clarified whether he was going to table an amendment at Consideration Stage to make such offences indictable only.**

## General Comments

177. A number of other issues were raised by organisations in relation to the complexity/ piecemeal approach to human trafficking legislation, the need to legislate for a human rights based approach to human trafficking and the need for legislation in relation to support measures for victims, training, data collection, measures to address demand for sexual services and protections for the child. Both Care in Northern Ireland and the Children's Commissioner suggested that the scope of the Bill would enable these issues to be addressed within it.

## Complexity of the Legislation

178. CARE in Northern Ireland highlighted that the proposals in the Criminal Justice Bill seek to copy England and Wales in the substance of the changes to be introduced, but it achieves it through a different means, with the outcome being that there will be more trafficking offences applicable in Northern Ireland than in England and Wales.
179. It highlighted that the changes to extraterritorial powers were enacted for England and Wales through the Protection of Freedoms Act 2012 and pointed out that the Department of Justice has taken a different approach to bringing in these requirements to that adopted within the Protection of Freedoms Act 2012. CARE in Northern Ireland was not clear on whether there are significant benefits to one system over another but it highlighted that it does mean that trafficking legislation within the UK is becoming more divergent.
180. The Department noted that there was a concern that the different approaches between Northern Ireland and England and Wales may be confusing for victims but was of the view that any confusion could be explained to the victim by their legal representative. It highlighted that the clauses in the Criminal Justice Bill, although drafted in a different style, cover the same range of criminal activities as in England and Wales and mirror the additional provisions introduced in Scotland which provide for extra-territorial jurisdiction over persons habitually resident in Northern Ireland at the time of committing the offence outside the United Kingdom and companies incorporated under the law of a part of the United Kingdom.
181. The NIHRC broadly welcomed the Criminal Justice Bill 2012, and in particular, the provisions relating to human trafficking. However it noted that the legislative framework which outlines offences concerning the trafficking of human beings is particularly complex in Northern Ireland and already involves reference to the Sexual Offences Act 2003, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Sexual Offences (Northern Ireland) Order 2008 and the Coroners and Justice Act 2009. It highlighted that these provisions are set to be accompanied by the Criminal Justice Bill and a potential Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. The Commission felt that consideration should be given to the introduction of a trafficking human beings legislative guide or a single comprehensive piece of legislation to increase the accessibility and awareness of the crime.
182. NICEM was also concerned about what it viewed as a piecemeal approach to legislative reform in this area which could lead to a complex and potentially weak legal framework and make it more difficult for law enforcement officials and legal practitioners to combat human trafficking and protect and support victims. In its oral evidence NICEM referred to the GRETA report which addresses the consequences of having numerous pieces of legislation.
183. The Department indicated that none of the law enforcement agencies who work with the legislative framework had experienced difficulties however it may consider a consolidation exercise when other pressing areas of work had been completed. It also highlighted that the Public Prosecution Service Policy on Prosecuting Cases of Human Trafficking, which will be published early in 2013, will contain a legislative guide.

## Minimalist approach to implementing the EU Directive

184. CARE in Northern Ireland felt that the proposals in the Bill reflect a very minimalist approach to implementing the European Directive. It expressed concern that there is, as yet, no reference to how Northern Ireland will make itself compliant with all the other parts of the Directive. It was of the view that the Northern Ireland Executive is acting as if these two changes are the only changes it needs to make in order to become compliant with the Directive. It was extremely concerned about the minimalism of this approach because the UK Government had suggested in the first instance that the UK did not need to opt in to

the Directive. It emphasised that it is very important to make sure that proper rather than minimalist compliance is achieved.

185. NICEM highlighted the need for a three-pronged approach to human trafficking, namely the prosecution of trafficking and related offences, protection of victims and prevention of trafficking. In NICEM's view, the current provisions in the Bill deal with the prosecution element but provisions relating to the protection of victims and prevention of trafficking are missing.
186. The NIHRC highlighted that the EU Directive and the UN Protocol on the Trafficking of Human Beings require a comprehensive approach to the issue of human trafficking and encouraged the Committee to keep this matter under review. It also highlighted that the EU Directive requires further implementation before compliance is achieved, particularly in the areas of victims services, protections for the child, and measures to address demand. The Commission made reference to its own scoping study published in 2009 in conjunction with the Equality Commission for NI and the Institute for Conflict Research on 'The Nature and Extent of Human Trafficking in Northern Ireland' which made a number of recommendations in this area.
187. The Department highlighted that the Minister of Justice is clear that changes, whether through statute or administrative means, which will assist the work against trafficking will be considered but they must add to the provisions and the work already in place. The Department did not accept that a minimalist approach was being taken and highlighted a number of areas where Northern Ireland is going further than required by the Directive. These included the maximum term of imprisonment required under the EU Directive is 10 years whereas the maximum period in Northern Ireland under the current and the proposed legislation, in the Crown Court, is 14 years and Article 13 of the European Convention provides that there should be a recovery and reflection period of at least 30 days for potential victims of human trafficking whereas the minimum recovery and reflection period is 45 days which can be, and in many cases is, extended by the Competent Authority.

### Demand for sexual services

188. CARE in Northern Ireland stressed the need for work to be carried out on tackling demand for sexual services.
189. The Department agreed that demand is an important area to tackle and through the Organised Crime Task Force, it will roll out a communications strategy in 2013 to change public attitudes towards goods and services proffered through organised crime, including victims of human trafficking. Also, the Minister is considering what further steps can be taken, with regard to prostitution, as part of the review of the Strategy for Managing Women Offenders.
190. Both CARE in Northern Ireland and Evangelical Alliance wished to see robust measures against human traffickers matched by a consistent policy when dealing with the users and encouraged debate and consideration of the 'Swedish model' as proposed in Lord Morrow's draft Private Members' Bill, namely outlawing the purchase of sexual services.
191. The Department informed the Committee that its attention had been drawn before to what is said to be the success of a measure introduced in Sweden which criminalised prostitution and which, it is claimed, has led to a reduction in prostitution. However, the Department noted that there are also reports that reoffending occurs despite the ban and an official from the Swedish Human Trafficking Unit is quoted in the Belfast Telegraph (22 August 2012) as describing the policy as a 'failure'. It felt that it was worth noting that legislation was not the only step taken; a significant part of Sweden's approach involved strategies (with the investment of resources) to support women to exit prostitution. Furthermore, the Swedish legislation was brought about following widespread public support and has been the product

- of its culture. Other countries have taken different approaches to prostitution, ranging from banning prostitution or associated activities, through to decriminalisation and regulation.
192. The Department was not convinced that such an offence would be enforceable or effective as a deterrent, and was concerned that it risks driving prostitution underground and putting vulnerable women at greater risk of exploitation and harm. It felt that linking trafficking and prostitution in this way also carries the risk of distracting the attention (and potentially, resources) from one issue to the other.
193. Evangelical Alliance highlighted that another approach would be to change the offence of 'purchasing sexual services from a prostitute subjected to force' from a summary offence to a hybrid offence. This would give the PPS greater flexibility in terms of timescale, court of prosecution and greater sentencing powers. It states that even a relatively short custodial sentence and spell on the sex offenders register could be a very effective deterrent to reduce the demand for sex trafficking.
194. The Department advised in its response that the Minister had asked officials to look at the existing offence to see if any changes are required in terms of timescale. It highlighted that prostitution offences do not attract notification under the Sexual Offences Act 2003.
195. Evangelical Alliance also referred in its evidence to the tough approach taken by the Swedish Government to sentencing those convicted of trafficking: 'Any person who uses coercion or deception, exploits someone else's vulnerable situation or, by any other such undue or improper means, recruits, transports, houses, receives or takes any such action involving a person, and thereby takes control of that person, with a view to that person being exploited for casual sexual relations or in some other way being exploited for sexual purposes, shall be sentenced to at least two and at most ten years imprisonment for trafficking in human beings.' This means that in Sweden the minimum someone would face, on conviction of a sex-trafficking offence, would be 2 years imprisonment. Evangelical Alliance suggested that a minimum custodial sentence fixed in legislation, not merely in Sentencing Guidelines, could be an effective deterrent to those seeking to profit by sex trafficking here. It also suggested that this is coupled with a mandatory period on the sex offenders register for those convicted of any offence related to sex trafficking.
196. In its response the Department indicated that Sentencing Guidance was set out by His Honour Judge Burgess in the case of *Rv Matyas Pis*. In relation to trafficking for sexual exploitation, the Guidance notes that human trafficking is serious offending behaviour, which society as a whole finds repugnant, and a financial or community penalty would rarely be an appropriate disposal; and that the starting point for sentencing for offences of trafficking for sexual exploitation should be a custodial sentence.
197. The Department confirmed that these offences would be added to the schedule of those referable by the Director of Public Prosecutions to the Court of Appeal as unduly lenient.
198. **The Committee noted that the Minister has asked officials to look at the existing offence to see if any changes are required and that this is covered in Lord Morrow's draft Private Members' Bill on human trafficking which would come to the Committee for scrutiny following introduction to the Assembly.**

### Additional clause

199. NICEM recommended that, in accordance with Article 3 of the Directive, a clause should be included to extend the offence of trafficking people for sexual exploitation to persons who may incite, aid, abet or attempt to commit the offence.
200. The Department did not agree that there was a need for the inclusion of such a clause. It pointed out that Northern Ireland law, in a similar manner to equivalent legislation in England and Wales and Scotland, contained statutory provisions which apply to all criminal offences.

This relevant legislation is contained in: (a) The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983; (b) Section 4 of the Criminal Law Act (Northern Ireland) 1967 (Penalties for assisting offenders); and (c) Section 8 of the Accessories and Abettors Act 1861, which provides that a person who aids, abets, counsels or procures the commission of any indictable offence shall be punished as a principal offender.

## Language and terminology

201. The PSNI recommended consistency in the Bill in referring to ‘human trafficking’ rather than, at times, ‘trafficking people’. The PSNI felt that this consistency would ensure that the Bill reflects accepted terminology in this area and avoids confusion with the separate offence of ‘people smuggling’.
202. The Department’s initial response noted that human trafficking was now a well understood terminology or description and was of the view that its use in the long title to the Bill provided a concise and easily understood description of the specific sexual and labour exploitation offences arising from the trafficking of human beings. The Department stated that the proposed PSNI approach could result in something less succinct in terms of draftsmanship and would not necessarily improve upon the existing use of the readily understandable generic description of ‘human trafficking’. The Department highlighted that the existing use of ‘human trafficking’ was not inconsistent with the provision of the amended offences in Clauses 5 and 6 which deal with “trafficking”.
203. The Committee sought further clarification in relation to this issue from the Department who clarified that the PSNI was referring to the long title to the Criminal Justice Bill, which reads: ‘Amend the law relating to ... and human trafficking and to ...’. The Department pointed out that the PSNI contrasted this with the terminology used as clause headers in the Bill: ‘Trafficking people for exploitation’, ‘Trafficking people for sexual exploitation’ and ‘Trafficking people for other exploitation’. The Department highlighted that a range of phrases relating to the offence of human trafficking are used interchangeably throughout legislative instruments applying here as well as in England and Wales, Scotland and the Republic of Ireland and these include ‘trafficking people for exploitation’, ‘trafficking people for sexual exploitation’, ‘trafficking people for labour and other exploitation’, ‘people trafficking’ and ‘trafficking of a minor’.
204. The Department also highlighted that similar variances apply in international instruments, for example in the EU Directive which refers to ‘human trafficking’ and ‘trafficking in human beings’, and in the UN Protocol which favours the terms ‘trafficking in persons’, ‘victims of trafficking’ and ‘exploitation of persons’.
205. The Department reiterated its view that view ‘human trafficking’ was a well understood term or description in the Directive and in the Protocol, and its use in the long title to the Bill provided a concise and easily understood description of the specific sexual and labour exploitation offences arising from the trafficking of human beings.
206. The Department stated in its response that ‘people smuggling’ was defined in Annex III of the UN Convention and expressed the view that it was clearly different from human trafficking. It also pointed out that, as with variations in the terms to refer to trafficking, there were also different ways of referring to ‘people smuggling’ such as ‘migrant smuggling’ or, increasingly, ‘human smuggling’.
207. **The Committee noted the clarification provided by the Department.**

## Definitions

208. Disability Action and CARE in Northern Ireland both requested that the definition of exploitation be extended to include forced begging.

209. The Department clarified that forced begging constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
210. NICEM also highlighted that a definition of habitual residence was not included.
211. The Department advised that the term 'habitual residence' occurred in a number of Conventions and Directives and was not defined within them. Its view was that Case Law was clear that it should be given its ordinary and natural meaning having regard to the facts of each case.
212. **The Committee noted the Department's response.**

### Extension of jurisdiction

213. The NIHRC welcomed additions by the Bill of section 58A to the Sexual Offences Act 2003 and of subsections 3A, 4A and 4B to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which introduce liability for UK citizens who arrange or facilitate trafficking for the purposes of sexual exploitation or for other exploitation outside of the UK. The Commission also welcomed that this extension of jurisdiction includes persons habitually resident in Northern Ireland at the time of the offence and advised that the Executive must notify the European Commission of this aspect of the extension as required by Article 10(2) of the EU Directive.
214. The NIHRC highlighted that Article 10(1)(a) of the EU Directive requires the UK to establish jurisdiction over offences concerning trafficking of human beings where the offence is committed 'in whole' within the UK. Similarly, Article 2 of the Council of Europe Convention on Action Against Trafficking in Human Beings states the scope of the Convention to apply to 'all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime'. In this regard, the Commission welcomes the amendments made by the Bill to section 4(2) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which extends the offence of trafficking for other exploitation to apply where a person arranges or facilitates the offence within the UK without the need to demonstrate that the person held the belief that the victim was first trafficked into the UK.
215. The NIHRC raised an issue around the requirement in Article 10(1)(a) of the EU Directive for the UK to establish jurisdiction over offences concerning trafficking of human beings where the offence is committed 'in part' within the UK. The Commission noted that sections 109 and 110 of the Protection of Freedoms Act 2012, which extend to England & Wales, contain provision that a non-UK national will be culpable for the offence of trafficking for sexual, labour and other exploitation under the legislation if 'any part of the arranging or facilitating takes place in the UK'.
216. The Department indicated in its response that the Protection of Freedoms Act 2012 provisions comply with the minimum mandatory compliance requirements in Article 10(1) of the Directive 2011/36/EU. It pointed out that the provisions in the Criminal Justice Bill will make these changes for Northern Ireland and will also implement the discretionary changes set out in Article 10(2) of the Directive in that the offence will extend to habitual residents and bodies incorporated under the law of a part of the United Kingdom.
217. The NIHRC highlighted that an equivalent level of jurisdiction was not contained in the Criminal Justice Bill and provided an example whereby a non-UK national (who is not habitually resident in Northern Ireland), person 'A' whilst in Northern Ireland, arranges via email, telephone or other personal communication for the trafficking of person 'B' from State 1 ('India') to State 2 ('Lebanon'), it appears that person 'A' could be prosecuted in England & Wales but not in Northern Ireland. The NIHRC suggested that clarification should be sought



on the application, if any, of sections 109 and 110 in Northern Ireland, and whether or not the scenario outlined was covered by the Bill.

218. The Department's position was that the example was not accurate, and indicated that trafficking outside the United Kingdom would now be covered by the amendments made in England and Wales under sections 109 and 110 of the Protection of Freedoms Act 2012, but not by the Criminal Justice Bill. It highlighted that the mandatory requirements in Article 10 of the Directive are that Member States will take all necessary measures to establish jurisdiction over Article 2 and 3 offences where: "(a) the offence is committed in whole or in part within their territory; or (b) the offender is one of their nationals."
219. The Department pointed out that the scope of the amended England and Wales offences, when commenced, will cover the pre-existing offences of trafficking into, within and out of the United Kingdom and the new extended extra-territorial offence of a UK national, regardless of where the arranging or facilitating of the trafficking takes place, trafficking a victim into, within or out of a country outside the UK.
220. It went on to state that Article 10(2) of the Directive permits Member States to provide for an optional discretionary extension of extra-territorial jurisdiction, where persons habitually resident in their country commit trafficking offences in foreign countries. It highlighted that the English legislation has only implemented the basic Article 10(1) mandatory obligations and, as has already occurred in Scotland since 2010, the Criminal Justice Bill creates Northern Ireland jurisdiction over British citizens, companies incorporated under the law of any part of the UK, and persons habitually resident in Northern Ireland, where any of these parties intentionally arranges or facilitates the exploitation of a victim in a country outside the UK. The Department highlighted that, in the example set out by the NIHRC, the hypothetical trafficker could not be dealt with under either the narrower England and Wales or our wider habitual resident provisions. The the foreign national, not committing any part of the offence in Northern Ireland, might perhaps be subject to the criminal jurisdiction of his country where it is a Member State which has signed up to the Directive. Alternatively the legal authorities in India or in Lebanon would have certain powers in respect of criminal offences committed within their territories.

### Aggravating factors

221. Mindwise stated that it would welcome accompanying legislation for enhanced sentencing where the victim is a mentally vulnerable person. It highlighted that the exportation of any person is to be abhorred, but should the victim be exploited because they are young or mentally vulnerable, then this should attract a greater sanction, thus sending out a message of support in the justice system for those weaker members of society.
222. Disability Action highlighted in its submission that courts should be allowed to take aggravating factors into consideration, including the disability of the victim, when passing sentence.
223. CARE in Northern Ireland recommended that the aggravating factors listed under Article 4(2) of the European Directive (committed against a particularly vulnerable victim, endangering the life of the victim etc.) should be specified in the legislation governing Northern Ireland in order for it to be compliant with the Directive, rather than being provided in sentencing guidelines.
224. In its response the Department clarified that the Magistrates' Courts Sentencing Guidelines set out general principles of sentencing which detail general aggravating and mitigating factors. In addition, the Crown Court guidance issued by Judge Burgess in 2012 following the R v Pis case (NICC 14), set out aggravating factors in relation to offences for human trafficking for sexual exploitation. The Department was of the view that these are matters which should be considered by the trial judge taking into consideration the circumstances

of each individual case. The Sentencing Guidance states that human trafficking is ‘serious offending behaviour, which society as a whole finds repugnant, and a financial or community penalty would rarely be an appropriate disposal.’ In relation to sentencing, it states that ‘the starting point for offences of trafficking for sexual exploitation should be a custodial sentence.’

225. The Department also clarified that Sentencing Guidelines already make provision for the consideration of factors relevant to both sexual and labour exploitation offences which indicate a higher degree of culpability on the part of the offender. These include offences motivated by or demonstrating hostility based on a victim’s disability or presumed disability, the deliberate targeting of vulnerable victims and the abuse of power or a position of trust.
226. The Department stated that, in relation to such victims, Section 4 (4)(d) of the Asylum and Immigration (Treatment of Offenders etc.) Act 2004 provides that a person is exploited if he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person; and (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
227. It also highlighted that Section 60 of the Sexual Offences Act 2003 provides that a relevant offence under sections 57 to 59 of the Act means, inter alia, an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008. Part 4 of that Order makes provision for sexual offences against a person with a mental disorder.
228. The Department informed the Committee that, as yet, no cases have come before the Northern Ireland Crown Court in relation to trafficking for labour or other exploitation but the Lord Chief Justice has put procedures in place to identify such cases if and when they do in order that Sentencing Guidance can be issued. Vulnerable victims, including children, are generally treated by the courts as being an aggravating feature of any given crime. The Department highlighted that the courts will sentence in accordance with the legal obligations placed upon them.
229. **The Committee noted the Department’s response.**

## Training and investigative tools

230. CARE in Northern Ireland highlighted that Northern Ireland may already be complying with the provisions under the Directive’s Articles 9(3) and 9(4) regarding training and the availability of proper investigative tools at a policy level. However, it raised the issue that if this area was not contained in legislation, there was a risk that the services would be vulnerable to cuts. It referred to the recently published GRETA report which stressed the need for training across the board in dealing with trafficking victims, including the importance of ensuring that all First Responders are fully trained in the processes for making a referral to the National Referral Mechanism
231. The Department did not consider that this needed to be put on a statutory basis. It highlighted that training and investigative tools are already available and the Organised Crime Task Force’s (OCTF) Immigration and Human Trafficking Subgroup is to undertake a mapping exercise in conjunction with other stakeholders and NGOs on human trafficking related training.
232. Disability Action stated in its evidence that the training and investigative tools for police and prosecutors need to be improved.
233. The Department in its response highlighted that the PSNI had recently assisted in the development and introduction of an online training package, targeted at frontline officers and staff to assist in the recognition of signs of trafficking. It pointed out that 2800 PSNI officers

and staff had successfully completed the training and, in addition, the PSNI's Organised Crime Branch had introduced and delivered bespoke training to a number of detectives to enhance their investigative skills and ensure that officers know how to engage voluntary and statutory partners in assisting rescued victims.

234. The Department informed the Committee that training had been provided to all prosecutors on human trafficking for sexual exploitation, internally and with input from UKBA and that the Organised Crime Task Force's Immigration and Human Trafficking Subgroup is to undertake a mapping exercise on human trafficking related training. The Department advised that it anticipates that further training will be provided when the PPS Policy on Prosecuting cases of Human Trafficking is issued.

## Non-prosecution of victims

235. CARE in Northern Ireland highlighted in its evidence that the EU Directive mandates that proceedings should not be dependent on the reporting or accusation of the victim, and that proceedings should be able to continue if the victim withdraws their statement (Article 9(1)). Given the circumstances and difficulties faced by most trafficking victims, CARE in Northern Ireland was of the view that these are key provisions to ensure improvements in the number of successful convictions, but points out that they are not set out in the Bill.
236. The Department indicated in its response that Article 8 of the Directive requires that 'Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.' The PPS advised the Department that it will apply the 'test for prosecution' in all cases referred to it by police regardless of whether the victim reports the offence, makes a statement or withdraws a statement. The 'evidential' and 'public interest' tests will be applied and if both are passed prosecution will be initiated or continued. The statutory obligations placed on the PPS by the Justice (Northern Ireland) Act 2002 require public prosecutors to review each case received from the investigator in accordance with the Code for Prosecutors to determine whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should continue. The PPS Policy on Prosecuting Cases of Human Trafficking which will be published early in 2013, explains that the PPS cannot provide blanket immunity from prosecution for victims of human trafficking and that every case must be considered on its merits and having regard to the seriousness of the offence committed. However it points out that should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor mitigating against prosecution.
237. The Department also indicated that the PSNI is required under section 32 of the Police Act (Northern Ireland) 2000 to investigate if they suspect that a criminal offence has occurred. It highlighted that resources for investigation and prosecution are in place and that none of the law enforcement agencies have advised the Department that provision on a statutory basis would aid the investigation or prosecution processes or is required on a statutory footing.
238. In its evidence NICEM acknowledged that the PPS is currently consulting on a policy relating to prosecution guidelines and NICEM intends to submit a response to that process. However, in relation to prosecution, NICEM suggested that it may be necessary to amend the legal framework as the EU Directive calls for the non-prosecution of victims, which is currently not possible due to the Justice (Northern Ireland) Act 2002.
239. The Department indicated in its response that this was not correct and referred to the PPS policy which includes reference to the case of *R v LM* [2010] EWCA 2327 in which the court stated that prosecutors must consider the public interest in prosecution when the defendant

is a trafficked victim and the crime has been committed when he or she was in some manner compelled to commit.

240. NICEM also drew the Committee's attention to the other international instruments that Northern Ireland is bound by in terms of its efforts to combat trafficking i.e. the Council of Europe Convention on Convention on Action against Trafficking in Human Beings 2005 and the Protocol to the United Nations Convention against Transnational Organised Crime and recommended that the legislature bears these in mind.
241. The NSPCC also referred to the PPS 'Policy for Prosecuting Cases of Human Trafficking' in which it proposes to work closely with the police, other colleagues in the criminal justice system and the voluntary sector to identify ways to increase disruption, prevention, investigation and prosecution as well as improving victim and witness care and protection. The NSPCC stated that non-governmental organisations will often have greater experience of victims and their differing needs and that a criminal justice route is not the only way of responding to trafficking; criminal and civil law may need to be used in conjunction with support services for victims. It was of the view that the proposed legislative provisions will strengthen further the inter-agency approach to tackling the issue of trafficking.
242. The Department clarified in its response that the recently announced OCTF Engagement Group on Human Trafficking, would look at how the Department can work with NGOs in a number of ways, including awareness raising, training and support for victims. It highlighted that this group would allow NGOs to share their valuable experience and knowledge with the Department, statutory bodies and other NGOs.
243. **The Committee noted the Department's response.**

### Protection, assistance and support for victims

244. CARE in Northern Ireland was of the view that adequate protection for victims of trafficking during the investigation and prosecution of an offence should be enshrined in the legislation, including amendments to the Criminal Evidence (Northern Ireland) Order 1999 to ensure 'special measures' for trafficking victims acting as witnesses (Article 12(4)). It referred to the recently published GRETA report which urged action to protect victims during the pre-trial and court proceedings and highlighted that Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill covers this issue.
245. The Department indicated in its response that Article 5(4) of the 1999 Order provides that complainants of sexual offences (including in circumstances of human trafficking) who are giving evidence are considered to be intimidated witnesses. Victims of labour and other exploitation offences set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc Act 2004 ("section" 4 victims) can be considered for special measures assistance by the court under the current legislation. The background to the Article 5(4) automatic eligibility provision is that, when giving evidence in sexual offences, complainants often have to talk about very personal and intimate details. The Department was of the view that it is not appropriate to create a hierarchy of victims and offences and that eligibility should be based on an individual assessment of each case.
246. It highlighted however that current measures will be further enhanced when it amends the 'Achieving Best Evidence in Criminal Proceedings' Guidance to specify human trafficking victims as falling within the definition of 'intimidated'. It also highlighted that it plans to include a specific section on human trafficking victims in guidance on working with intimidated witnesses which will be brought forward in 2013.
247. Disability Action highlighted that better support should be provided to victims as proposed in Lord Morrow's consultation paper on Proposed Changes in the Law to Tackle Human Trafficking.

248. The Department highlighted in its response that there is already provision, funded by the Department, for support for victims during the recovery and reflection period however the Department is considering, in conjunction with others, whether further steps are necessary in relation to victim support to ensure compliance with Article 11 of the EU Directive, including secondary legislation.
249. The Department also highlighted that, for recovered adult victims beyond the recovery and reflection period, the arrangements are set out in the guidance on 'Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking'<sup>2</sup>, which was published recently.
250. According to information received from the Department, it would appear that it is already compliant with the requirements of the EU Directive in most areas and will be compliant in all but one by April 2013. The one outstanding issue is around support for victims under Article 11 of the Directive and the Department responded that it intends to strengthen support for victims through the introduction of secondary legislation.
251. **The Committee noted the Department's response and that it was considering secondary legislation to strengthen support for victims which would ensure compliance with the EU Directive by April 2013.**

### Trafficking children

252. The Northern Ireland Commissioner for Children and Young People (NICCY) highlighted that the safeguarding and promotion of the rights and best interests of separated children and young people subject to immigration control in Northern Ireland is an important issue for the Commissioner. The Commissioner was of the view that the risk of trafficking of the small number of separated children subject to immigration control in Northern Ireland should not be considered separately from the issue of the complex immigration processes to which these children are subject.
253. The NSPCC referred to the Policy and Practice briefing 'Separated Children and Child Trafficking in Northern Ireland' which highlights the findings of a scoping study it undertook in September 2011 in partnership with Barnardo's. The study showed that, while the incidence of trafficked children in Northern Ireland is small, it is important to recognise this can be a hidden problem and difficult to identify. The NSPCC referred to research which indicates that 'there can be a lack of awareness by the general public and some practitioners which is enhanced by a culture of disbelief'. However, if this is addressed, more cases of child trafficking can be identified (Pearce et al, 2009). The Policy and Practice briefing recommended that professionals who come into contact with separated/trafficked children in Northern Ireland should be trained to understand and effectively respond to their needs and that awareness-raising, embedding knowledge and building professionals' confidence about the issue of separated children, and child trafficking in particular, is vital for effective safeguarding. It also recommended that this should apply to those in the criminal justice system as well as professionals in education, social services, health and the voluntary sectors.
254. In its response the Department clarified that awareness of human trafficking was highlighted by the BlueBlindfold campaign which was re-launched last year. Also, the OCTF developed a multi-lingual "Visitor or Victim?" leaflet and poster targeted at potential victims which are displayed at key places where victims might be, including ports, main railway stations, health centres and doctors' surgeries.
255. The Department advised that further work on awareness raising would be considered by the Human Trafficking Engagement Group and again highlighted that responsibility for provision

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2 <http://www.dojni.gov.uk/working-arrangements-for-the-welfare-protection-of-adult-victims-of-human-trafficking.htm>

of protection, care and support to children who are trafficked, including access to health and social care, falls to HSC Trusts.

256. CARE in Northern Ireland highlighted that Northern Ireland does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare (Articles 13-16 of the Directive). It was especially concerned that the need for a Guardian or Representative for Trafficked Children (Article 14(2) & 16(3)) should be addressed and referred to the position in England and Wales where government has argued that there is no need for a new role, but the evidence of a large number of trafficked children lost in England and Wales between 2007 and 2010 (301 out of 942) raises significant questions about the effectiveness of current arrangements.
257. It referred in its submission to the GRETA report which raised concerns about the number of children that go missing, stating that ‘a system of guardianship is essential to ensure the children’s protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing’ and urged action to ‘ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian’.
258. CARE in Northern Ireland also referred to the UN which is encouraging governments ‘to assign guardians or representatives a specific duty to advocate for the best interest of the child on a regular basis, to act as an advocate for the child as well as a bridge and focal point for the child’s interaction with other authorities and actors. The guardian or representative should also be provided with a role in ensuring that the child is able to participate in decisions.’
259. The Department clarified that recovered child victims of trafficking and those suspected of being victims of trafficking are deemed to be ‘children in need’ under the Children (NI) Order 1995 and therefore the responsibility for provision of protection, care and support to these children, including access to health and social care, falls to Health and Social Care Trusts. At the request of the Committee, the Department sent a copy of the relevant evidence to the Department of Health, Social Services and Public Safety. The Department of Health subsequently responded providing details of the joint PSNI and Barnardo’s early intervention initiative to tackle child sexual exploitation in South and East Belfast and clarified that statutory provision already exists for the appointment of a Guardian ad Litem to appoint a legal representative to act on behalf of a child. In the absence of a Guardian ad Litem, the court can appoint a solicitor for a child.

## National Rapporteur

260. CARE in Northern Ireland stated in its evidence that there was scope to take a more fulsome approach to implementing the EU Directive on human trafficking than had been adopted in England and Wales, to meet the requirements of Article 19, by introducing a national rapporteur or equivalent mechanism.
261. It highlighted that the UN had encouraged clear accountability processes for their National Rapporteurs or equivalent mechanisms and that the UK had an Interdepartmental Ministerial Group in place which together with the UK Human Trafficking Centre, fulfilled the UK obligations. CARE in Northern Ireland pointed out that this monitoring system was not independent of Government and the Ministerial group did not produce public reports. It also pointed out that while neither of these requirements was explicit in the Directive, the common understanding of a National Rapporteur was that they were independent of government and reports were placed in the public domain. It highlighted that Holland and other EU countries, which created an independent overseer, had seen real success in the quality of information available to the government and the profile of trafficking in their parliaments.
262. CARE in Northern Ireland stated that Northern Ireland had the opportunity to follow best practice in Europe and to lead the way in the UK with a functional, independent rapporteur

who would be able to undertake the kind of research, reporting and accountability role envisioned in Article 19. It was also of the view that a National Rapporteur could ensure good liaison with NGOs and the Children's Commissioner for Northern Ireland thereby meeting two of the GRETA report recommendations for improved formalised arrangements with NGOs and civil society in Northern Ireland.

263. The Department outlined in its response that Article 19 required that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms' and it did not require that the rapporteur or equivalent mechanism should be independent.
264. In its view there was already independent scrutiny of the response to human trafficking by a number of bodies including the Justice Committee and the All Party Group on Human Trafficking. It also highlighted the independent reports written on anti-trafficking efforts including the Anti Trafficking Monitoring Group (ATMG) which published its report entitled 'All Change – Preventing trafficking in the UK' in May 2012. The report noted that, in relation to Northern Ireland, 'considerable efforts have been made by the Department of Justice to respond to trafficking in its jurisdiction'.
265. The Department also stated that the GRETA report which contained 35 proposals on the UK's approach to tackling human trafficking across all aspects of trafficking, made one recommendation which is specific to Northern Ireland. This called on the PPS to promptly issue guidance on trafficking offences in Northern Ireland. The PPS launched a consultation on this policy on 11 June 2012 and hopes to publish the finalised policy before the end of this year.
266. The Department also indicated that the US Trafficking In Persons (TIP) Report which monitors countries' anti-trafficking efforts against minimum standards set out in the US Trafficking Victims Protection Act 2000, and ranks countries according to the standards each year, ranked the UK as tier 1 since the inception of the TIP report in 2004 - tier 1 being the highest ranking awarded. The 2012 TIP report suggested that the UK should consider a range of areas including: introducing private interviews for incoming domestic workers; introducing a system of guardianship for children; appointing a rapporteur or similar mechanism in each region; increased training and awareness raising; and assessing the significant level of non-EU potential trafficking victims who do not receive a positive conclusive grounds decision.
267. **The Committee noted that the Interdepartmental Ministerial Group, together with the UK Human Trafficking Centre, fulfilled the UK obligations in relation to a National Rapporteur and expressed some concerns that the process was not independent of Government. Given that those countries that had created an independent overseer had seen real success in the quality of information available and the profile of trafficking in their parliaments, the Committee agreed to raise the issue of an independent national rapporteur with the Minister. Depending on the Minister's response the Committee agreed that it may wish to return to this matter during its consideration of Lord Morrow's Private Members' Bill on human trafficking which would come to the Committee for scrutiny following its introduction to the Assembly.**

## Public Protection Arrangements

268. In its evidence, the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) sought clarification on whether consideration had been given to the impact of the new offences on the Public Protection Arrangements.
269. The Department advised that Clause 5(3)(a) and (b) of the Criminal Justice Bill adds the new offence of trafficking outside the UK for sexual exploitation to Schedules 1 and 2 of the Criminal Justice (NI) Order 2008.

## Data collection

270. Disability Action highlighted that there was considerable evidence of a growing trend for the trafficking of people with disabilities for exploitation in Asia and the Middle East with reported incidents in Great Britain but despite recent reports on trafficking in Northern Ireland there was little available evidence on the extent of the problem of the trafficking of disabled people as disaggregated data was not available. Disability Action stated that this was a common problem in many states which had led to some commentators calling disabled people, “the forgotten people of modern day slavery”.
271. Disability Action referred to research carried out by the Institute for Conflict Research in 2009 which highlighted that the system of data collection on trafficking in Northern Ireland was virtually nonexistent. The research report recommended that the Northern Ireland Office should begin a wide-scale consultation with all relevant departments and organisations, including non-governmental organisations, on how data should be collected, stored and made available for assessment. Disability Action indicated that it was not aware of any action on this matter with regard to people with disabilities and highlighted that it was unknown how many of the 75 individuals who were reported to have been rescued from trafficking by the PSNI since 2009/10 were disabled or what support had been given to them with regards to any disability.
272. Disability Action also referred to the Assembly research paper on trafficking which highlighted data sharing and the availability of data as issues and urged the Committee to call for better statistics and information on the extent of the problem of the trafficking of disabled people in Northern Ireland.
273. The Department highlighted in its response that one of the next steps identified in the Inter-Ministerial Working Group 2012 report as requiring further work was on data capture and intelligence sharing – capturing data on potential victims of human trafficking and improving our understanding of traffickers, the routes and methods they use, and the Organised Crime Gangs involved. The Department advised that both it and the Organised Crime Task Force’s Immigration and Human Trafficking Subgroup would work with the Home Office and the UK Human Trafficking Centre on improving data collection.
274. **The Committee noted the work to be undertaken in relation to data capture and collection.**

## Committee position on additional legislative measures relating to human trafficking

275. **It is clear from the evidence received that a number of the voluntary organisations believe there is an opportunity to put further measures into legislation, particularly in relation to protection, assistance and support for victims, including children, and training and investigative tools, which the Department has missed in bringing forward this Bill. The organisations have stated that, in their view, the Department has adopted a minimalist approach in implementing the EU Directive.**
276. **The Committee notes that the Department refutes this claim and has outlined that the issues are being tackled and work is being taken forward in a wide range of areas. The Department has indicated that further legislative provision is not required to implement the EU Directive except in the area of support for victims where consideration is being given to subordinate legislation.**
277. **The Committee wishes to see the strongest possible legislation introduced in Northern Ireland in relation to human trafficking and this is evidenced by its approach to the level of sentences available for human trafficking offences.**
278. **The Committee recognises the merit in making further legislative provision in additional areas and will give further consideration to this in the context of Lord Morrow’s Private**



**Members' Bill which will come to the Committee for scrutiny following its introduction into the Assembly.**

## Retention of fingerprints, DNA profile etc.

279. Clause 7 of the Bill and Schedules 2 and 3 insert into PACENI the new framework governing the retention and destruction of fingerprints, DNA samples, etc. and makes consequential amendments. It also requires the Department to make an order containing transitional or saving provisions associated with the coming into force of that Clause, and the repeals in Part 2 of Schedule 4. In particular, the Department must provide for the destruction or retention of biometric material already in existence at the point this legislation comes into operation. This will enable the Department to ensure that the retention and destruction regime set out in the Bill is applied to existing material, while recognising that this exercise may take some time to complete.
280. The retention framework provisions are being made in response to the 2008 judgement of the ECHR in the case of *S and Marper v UK*. The ECHR ruled that the provisions in the Police and Criminal Evidence Act 1984 (PACE) for England and Wales permitting the indefinite retention of DNA and fingerprints from unconvicted individuals violated Article 8 (right to privacy) of the ECHR. Northern Ireland has similar provisions in PACENI.
281. During the consideration of this part of the Bill, some Committee Members indicated they had a range of issues and concerns regarding the proposed new retention framework. These issues and concerns are outlined in this section.

## General Comments

282. The Committee received a number of general comments from CAJ, NIPB, PSNI, MindWise, Disability Action and the NIHEC which broadly welcomed the introduction of the retention framework provisions. However a range of organisations raised concerns, particularly regarding the retention proposals as they relate to children and young people.
283. The Committee on the Administration of Justice (CAJ) stated that it understood the proposals were designed to bring Northern Ireland law in line with that proposed for England and Wales and that it did not have any fundamental reservations about the proposed powers. Disability Action welcomed the commitment in the Bill that DNA and fingerprints will only be used for the purposes related to the prevention or detection of crime and MindWise stated that as a mental health charity it supported the rights of individuals and opposed discrimination, and that there was nothing in the provisions of Schedule 2 of alarm. MindWise went on to state that the legislation endeavoured to draw a balance between investigative necessity and the rights of the un-convicted person.
284. In its submission the Policing Board stated that the legislative framework put forward in the Criminal Justice Bill was broadly the same as that included in the consultation document and, in the spirit of the ECHR judgment in *Marper*, it distinguished between the offences and the offenders, and between adults and children and it provides for an independent Biometric Commissioner to be appointed. It will also apply to fingerprints, DNA profiles and samples currently retained, and not just those taken after the legislation is enacted.
285. The NIHRC welcomed the introduction of reforms to the legislative framework governing the retention of fingerprints and DNA to ensure compliance with the European Court of Human Rights ruling in the case of *S and Marper v United Kingdom [2008] ECHR 1581*. The NIHRC stated that in its opinion the Department had clearly been mindful of the *S and Marper* judgement in the development of the proposals. The Commission did however recommend that the Committee give detailed consideration to whether the clauses of the Bill met the Department's objective of seeking '*a proportionate balance between the rights of the individual*

*and the protection of the public'* and raised a number of issues in relation to the specific Articles in Schedules 2 and 3.

286. The PSNI highlighted that the DNA database and fingerprint collection are major tools in the PSNI's efforts to protect the public and that it had fully engaged with stakeholders, including the Department of Justice, as the retention framework in the Bill had been developed. Acknowledging the imperative of various judgements to effect change the PSNI stated it had closely followed the developments in the Crime and Security Act 2010 and the Protection of Freedoms Act 2012 and the resultant retention framework for England and Wales.
287. The PSNI considered that the fact that the provisions in the Bill reflect those in the Protection of Freedoms Act is an advantage when it shares information with England and Wales and that similar regimes will make it less likely to attract a legal challenge than if there were significant areas of difference.
288. The PSNI noted that any change from the current comprehensive framework risks destruction of samples and records that may leave crime undetected but recognised that this is balanced against the rights of the public to have their records destroyed and the final position was a matter of political judgement.
289. The Department welcomed the comments from CAJ, NIPB, MindWise, NIHRC and the PSNI. In response to the comments made by the Human Rights Commission the Department stated that retention of DNA profiles and fingerprints is for the sole purpose of the protection of the public and is focused on preventing and detecting crime. Material may be retained indefinitely only on the basis of a conviction for an offence serious enough to carry a custodial sentence. Where conviction is not the outcome, material may be retained only in relation to the most serious offences, and for a strictly limited period. The Department views this as the appropriate balance.

### The Department's Consultation Exercise

290. The Children's Law Centre highlighted that the Department of Justice did not publish a summary of the responses it received to its March 2011 consultation on the retention policy proposals and both it and the Commissioner for Children and Young People were of the view that the Department had taken little or no cognisance of the consultation responses it had received and the human rights concerns raised therein.
291. The Department confirmed that the original responses to the consultation had not been published, although they were shared with the Committee for Justice, and it had now published a summary of the consultation responses on its website.
292. The Department also stated that it had considered carefully the concerns and points raised in the consultation.

### Monitoring of Requests for disposal of DNA/Fingerprints

293. Disability Action was concerned that information relating to the taking, retention and disposal of fingerprints and DNA must be fully accessible to ensure that people with disabilities are not disadvantaged and that they are fully aware of the effects of the system. This will involve the monitoring of outcomes in relation to the number of people with disabilities requesting disposal of their DNA and fingerprints compared to the general population and consideration given to the formats used in the notification processes.
294. The Department confirmed that it would discuss monitoring and information-gathering around the proposed retention framework with the PSNI and FSNI.

## Cost Implications

295. Both the Policing Board and the PSNI highlighted the cost implications of the proposed retention framework. The PSNI indicated that the new retention framework was complex and presented many challenges in terms of technology, decision making and resource allocation and stated that the process of 'legacy weeding' and business as usual management of the new procedures would inevitably add expense to the operation and management of the DNA database and fingerprint collection.
296. The Policing Board highlighted that once the new legislative framework was in force, it would require the PSNI to determine whether to continue to retain, and if not to destroy, existing fingerprints and DNA material, and would cost the PSNI in the region of £2.5 million.
297. The Department acknowledged that the new framework was more complex than the existing arrangements and stated that that this was an inevitable consequence of moving from the existing indiscriminate system to one which is ECHR-compliant. The Department confirmed that money had been included in the policing budget for this purpose in an earlier financial year, but had been surrendered as an easement because of the delay in implementing the framework. In oral evidence departmental officials confirmed that the PSNI would have to bid for this budget allocation again and the Department would consider the bid favourably.

## Photographs

298. The NIPB questioned whether consideration had been given by the Department to the introduction of a legislative framework for the retention of photographs by the PSNI.
299. The Department indicated that following the case of *R (RMC+FJ) v The Commissioner of Police of the Metropolis*, the Association of Chief Police Officers has set up a working group, on which the PSNI is represented, to bring the Management of Police Information (MoPI) guidelines into compliance with the ECHR. The retention of photographs is carried out under those guidelines, and the PSNI will implement agreed best practice. The Department is satisfied with this approach and does not therefore intend to bring photographs within the retention framework.
300. **The Committee noted the intended action in relation to the retention of photographs.**

## General Comments on the proposals as they relate to children and young people

### Human Rights Standards

301. A number of written submissions to the Committee including those from the Children's Law Centre, Women's Support Network (WSN), and Dr Linda Moore from the University of Ulster, raised concerns that the retention framework provisions in the Bill as they related to children were disproportionate, unjustifiable and in potential breach of children's rights standards.
302. The Children's Law Centre stated that it had serious concerns about the taking of fingerprints and the deriving of DNA profiles from DNA samples taken from children and young people and the retention of this material and recommended that these practices as they relate to children be halted immediately within the formal criminal justice system.
303. In oral evidence the Children's Law Centre highlighted its belief that the retention of fingerprints and DNA material has a stigmatising effect on children and young people. The Law Centre referred to longitudinal studies in Edinburgh that demonstrated that, where children have contacted the criminal justice system in any form, they are more likely to feel stigmatised, less likely to be diverted from the criminal justice system and more likely to retain contact with the police or the criminal justice system.

304. The WSN highlighted that Article 40 of the UNCRC places an obligation on States to recognise the rights of all children, even those who have infringed penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and in a way which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society.
305. The NIHRC stated that the retention of biometric material taken from children raises particular human rights issues and advised that the Committee considered both obligations placed on the state by virtue of the ECHR and the UNCRC in considering the aspect of the Bill relating to children.
306. The Commission indicated that, in light of the emphasis placed on the stigmatising effect of DNA retention by the ECHR, and the importance which the UNCRC places on promoting a child's sense of dignity and worth, it considers that a strong evidence case demonstrating that the arrangement regarding the retention of DNA material of children assists in the prevention of crime must exist and this aspect should be explored further.
307. The NICCY stressed the importance of human rights principles, particularly the principles of proportionality, necessity and presumption of innocence, underpinning the provisions of the Bill and, in response to its consultation, had strongly encouraged the Department to ensure that the policy proposals reflect the relevant articles of the UNCRC (16 and 40) and are compatible with Articles 8 and 6 of the ECHR.
308. The Commissioner was concerned that insufficient consideration had been given to the potentially negative implications of retaining such information, particularly where it impacts on a child or young person's privacy and safety or when it leads them into coming into contact with the criminal justice system.
309. In oral evidence the Commissioner stated that research suggests that a disproportionate number of young people come into contact with the police and that it may be due to the fact that some are more likely to offend in their teenage years. It was the Commissioner's view that children and young people's lack of maturity should be taken into account and they should not be stigmatised by actions undertaken before they have reached adulthood. In the Commissioner's response to the Department's consultation, she suggested that consideration should be given to reviewing the retention of young people's DNA data and fingerprints once they reach 18, so that they might be given an opportunity to enter adulthood with a clean slate. This decision would, of course, be dependent on the seriousness of the crimes committed and the number of offences for which they have been convicted. The Commissioner recommended that particular consideration be given to this proposal where children or young people have been arrested for or charged with minor offences or have been convicted for the first, minor offence.
310. Dr Moore expressed the view that the provisions in the Bill regarding the long-term, and sometimes indefinite, retention of children's fingerprints or DNA, where children are convicted only of minor offences, or in cases when they are not convicted but have previous convictions for minor offending appear to be disproportionate and a potential breach of children's human rights and civil liberties e.g. in respect of Article 8 of the ECHR (respect for private and family life) and Article 14 (right to the enjoyment of rights and freedoms without discrimination).
311. Dr Moore stated that young people in Northern Ireland have been stigmatised and demonised in the past, and many have experienced social disadvantage. It is therefore vital that legislation is not put in place that will further criminalise children and young people for what may be minor offending and will allow individuals little opportunity to redeem themselves.
312. During oral evidence with the Children's Law Centre and NICCY, Committee Members discussed the likely impact of the provisions as they relate to children and young people. Some Members questioned the view that retention could have a detrimental and stigmatising impact upon a child and sought to explore the evidence upon which this argument was based.

Other Members discussed how the organisations felt retention brought children back into the justice system rather than diverting them away from it. Another issue raised was whether it could be argued that the retention provisions could in fact offer protection to some vulnerable children and young people.

313. The Department, in response to the issues raised, outlined that it recognised that a number of respondents were critical of the framework in relation to the retention of DNA profiles and fingerprints of juveniles but pointed out that such retention was aimed at the prevention and detection of crime and could not be equated with a criminal record as it would never be disclosed.
314. The Department stated that the proposed retention did not cut across its considerable efforts to divert young people away from the criminal justice system or to deal with them in an appropriate manner should they come within it and viewed the implementation of the Youth Justice Review as providing a still sharper focus on a joined-up approach to early intervention and prevention; a greater emphasis on informal resolution and diversion; more effective engagement and communication with young people to improve decision-making and outcomes; custody arrangements that comply with international norms and standards; and affirmation that the best interests of children who encounter the justice system will be a primary consideration in how they are treated.
315. The Department highlighted that the Bill deals specifically with the retention and destruction of biometric material taken by the police in connection with an offence and that the Department considered the degree of interference with the privacy of young persons to be minimal and fully justified in that context.
316. It is the Department's view that the retention of biometric material cannot under any circumstances be said to have a detrimental impact on anyone's safety, nor will it lead to them coming into contact with the criminal justice system in the absence of offending. On the contrary, it could help to conclusively rule them out of enquiries.
317. The Department indicated that whilst offending for most young people is a one-off aberration, it is a fact of life that some do not desist and continue to offend with escalating frequency and severity. As it is not possible to say with any certainty into which group a young offender might fall, the Department was satisfied that it is necessary, proportionate and reasonable to retain biometric material to the extent permitted in the framework for the detection of crime, the protection of the public and, ultimately, in the best interests of victims (who are often also children) and offenders alike.
318. In response to the human rights concerns raised, the Department was of the view that the proposals in the Bill are fully consistent with the standards set out in the UNCRC, given that special provision has been made to recognise the need to treat convicted children with leniency to promote their constructive role in society. The retention periods for material from under-18s reflected a judgment as to where the fair balance lies between competing public and private interests. The Bill takes into account, on the one hand, the legitimate purpose of the prevention and detection of crime and the fact that people in this age group include those at the peak age for the onset of offending; and on the other hand, their special situation and the importance of their development and integration in society.
319. In the case of juveniles who have been convicted of serious offences, the Department considered that indefinite retention was appropriate, in line with the general policy. However, for many young people, involvement in crime is often an isolated incident and can be relatively minor. The Bill therefore provides that young people who are convicted of a first, minor offence will have their data retained for an individually-tailored period of between five and ten years only. In cases where there has been no conviction the research did not support a shorter DNA retention period for juveniles than for adults, highlighting that the future offending risks for juveniles are in fact higher than for adults. While viewed in isolation, that might justify longer retention for juveniles but, taking into account a range of other factors

- including the importance of their development and integration in society, retention periods have been kept the same. In such cases the Department considered that the Bill's provisions are sufficiently limited and targeted to be consistent with the safeguards required by the UN Convention.
320. In response to the NIHRC's request for information regarding the evidence base for the retention provisions as they relate to children, the Department stated that it examined cohort studies of youth re-offending in Northern Ireland carried out in 2007 and 2008. Of the 2008 cohort (around 2000 individuals), 70.8% had no previous convictions and that group had the lowest, one-year re-offending rate at 30.3%. In other words, approximately half of the study group were first-time offenders who did not go on to re-offend in the period under study. That is the group at which the existing mitigation is aimed. In the absence of further offending and if the offence was a minor one (as most are), material will not be retained indefinitely, but destroyed after five to ten years, depending on length of sentence. However, the Department pointed out that this group is at one end of a spectrum of offending. Of the same cohort, almost 9% had 9 or more previous convictions and, of that group, 68.9% re-offended within one year. In such cases, the Department considered indefinite retention appropriate.
321. In the case of juveniles charged with, but not convicted of, a qualifying offence, the Department's assessment is that it is necessary and proportionate to retain the material for three years. The Department does not believe it is appropriate to differentiate between juveniles and adults in this particular respect, given that the three year period is already relatively short. The Department believes that retention for a strictly limited three-year period should allay concerns about a long-term detrimental effect on young people's ability to be reintegrated into society and to assume a constructive role.
322. In response to the Children's Commissioner suggestion that consideration should be given to reviewing the retention of young people's DNA data and fingerprints once they reach 18, the Department referred to the 2008 cohort study pointing out that 47.5% of the cohort were aged 17 years and, of that group, 35% went on to re-offend within the first year. The previous year, the figures were 44% and 32% respectively.
323. The Department appreciated that the Review of Youth Justice in Northern Ireland had recommended that young offenders be allowed to apply for a clean slate on reaching the age of 18 but highlighted that no decision has yet been taken on this matter. However, it pointed out, that this recommendation is in the context of removing obstacles to future employment, and rehabilitation in society, and is very much focussed on criminal records. The purposes of criminal records and the DNA and fingerprint databases are quite different and deliberately dissociated in the Bill and there is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.
324. The Department confirmed that in the case of juveniles convicted once only of a minor offence, DNA and fingerprints will not be held beyond 10 years. The Department drew to the attention of the Committee guidance for FSNi published by the Attorney General for Northern Ireland which recommended a review of retention of material taken from juveniles in all cases after 10 years.
325. **Some Committee Members indicated that they had serious reservations regarding the retention proposals as they apply to children and juveniles, particularly in relation to minor offences, cautions etc. and questioned whether they were compatible with human rights principles. Other Committee Members were content with the proposals, noting that retention is focused in assisting the prevention and detection of crime. They did not accept there was a stigmatising effect given retention would not be disclosed, unlike a criminal record.**

## Minimum age of criminal responsibility

326. The Children's Law Centre, Dr Moore and the NICCY raised concerns regarding the application of the retention framework provisions within the context of the current age of criminal responsibility of 10 years of age.
327. The Law Centre stated that international standards with regard to the minimum age of criminal responsibility are very clear and that the UNCRC in both 2002 and 2008 recommended that the UK government raise the age of criminal responsibility. The Law Centre also highlighted that the recent report of the Review of Youth Justice recommended that the minimum age of criminal responsibility should be raised to 12 with immediate effect and following a period of review of no more than three years, consideration should be given to raising the age to 14.
328. The Children's Commissioner was concerned about how consent to provide DNA material would be secured from children as young as 10 years of age. In oral evidence the Commissioner highlighted that the capacity to consent is not just an issue for 10-year-olds but for a large proportion of young people who interact with the criminal justice system and have their own needs because of learning disabilities or mental health difficulties.
329. In response, the Department stated that the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) defines an 'arrested juvenile' as a person arrested who appears to be under the age of 18. It allows police to take DNA samples and fingerprints from anyone of 10 years – the current age of criminal responsibility – or above arrested in connection with a recordable offence. It is the Department's intention that the retention framework should apply to anyone who has reached the age of criminal responsibility. The Bill will not affect the taking powers mentioned above, but will restrict the circumstances in which such material may be retained. The Department confirmed that any change to the age of criminal responsibility would be reflected in the operation of PACE and, hence, in the application of the retention framework.
330. In response to concerns regarding the issue of consent, the Department highlighted that taking powers are already in Part VI of PACE which requires that the police ask detained persons for their consent to take a DNA sample and fingerprints although, if arrested for a recordable offence, such material may be taken without consent. That provision could apply to a juvenile as to an adult, in which case their parent or guardian would advise. In the absence of a parent or guardian, the Department funds an 'Appropriate Adult' scheme to ensure that young people get the support they need during police investigations and understand what is happening to them and why while they are going through the detention process, including any issues around the taking and retention of their DNA and fingerprints.
331. **Some Committee Members were content with the application of the provisions within the context of the age of criminal responsibility which is 10, viewing it as dealing with the practical reality. Other Members expressed concerns as they viewed the current age of criminal responsibility as being too low.**

## Appeals

332. The NICCY suggested that careful consideration should be given as to how a young person under 18 will be supported to undertake an appeal against an extension to the retention period. The Commissioner stated that it is important that appropriate and effective processes/ mechanisms are put in place to enable them to pursue an appeal and for any such appeals to be given equal weight and consideration.
333. The Department confirmed that any process within the Bill that may involve an appeal to the courts will attract the normal legal assistance appropriate in such cases.

## Equality Impact Assessment

334. The Children's Law Centre raised serious concerns regarding the decision taken by the Department that, following an Equality Screening of the policy proposals, an Equality Impact Assessment (EQIA) was determined not to be required. The Children's Law Centre highlighted to the Department of Justice how children and young people are the most vulnerable group in society and are covered under the age category in section 75 of the Northern Ireland Act 1998. It also highlighted that children are not a homogenous group and will be afforded further protection under other categories of section 75. The most relevant protections in relation to the consultation exercise, in addition to age, were protection on grounds of gender, race and religion due to the disproportionate number of young males who come into contact with the criminal justice system, including young black and young Catholic males.
335. Dr Moore also highlighted that the Bill had the potential to impact differentially and negatively upon young people as a group as research demonstrates that in Northern Ireland, as in other jurisdictions, children and young people are disproportionately likely to come into contact with the police.
336. Opportunity Youth believed that some of the proposals will have a disproportional negative effect on young people and could lead to increased stigmatisation, discrimination and disadvantage.
337. In its consultation response to the Department on the policy proposals the NICCY expressed concern that Section 75 is not being adequately enforced in respect of the age criterion and that public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. The Commissioner wanted further information on how the Department had sought the views of children and young people.
338. In response to the issues raised by NICCY, the Department stated that Section 75 diversity groups – including those representing children and young people – are included as part of all Departmental consultation exercises as a matter of course.
339. The Department also stated that a detailed screening exercise was carried out and no adverse impact on any section 75 category was identified. This reflects the fact that the proposals increase the protections available to all groups. The screening also takes account of the risk of all age groups becoming the victims of crime and the need to provide safeguards. It was the Department's view that the provisions actually discriminated positively in favour of young people in providing for reduced retention in respect of a single, minor offence. Otherwise, the application of policy, as set out in the retention framework, applies equally to all individuals of or above the age of criminal responsibility. The Department also pointed out that there is no absolute correlation between coming into contact with the police and having DNA samples taken.
340. **Some Committee Members had raised concerns at the policy development stage regarding the absence of an Equality Impact Assessment on the retention proposals.**

## Schedule 2

341. Schedule 2 inserts 14 new Articles after Article 62A of PACENI to replace the existing framework governing the retention and destruction of fingerprints, DNA samples and profiles and other samples (referred to generally as 'biometric material') taken from a person under the powers in Part VI of PACENI or in cases where such material is provided voluntarily.



## Article 63B – Destruction of Fingerprints and DNA profiles: basic rule

342. This Article sets out the basic rules governing the destruction of fingerprints and DNA profiles (collectively referred to as Article 63B material) taken under the powers in Part VI of PACENI or taken with consent during the investigation of an offence.
343. GeneWatch UK stated that provision 63B(3)(b) which allows the Chief Constable discretion in relation to the destruction of material obtained unlawfully or as a result of unlawful arrests or mistaken identity will be problematic e.g. where individuals dispute the circumstances of their arrest or collection of their DNA and fingerprints. GeneWatch recommended that such determinations are either made by a third party or may be appealed to a third party (such as the Police Ombudsman or Northern Ireland Biometric Commissioner).
344. The Department responded by stating that 63B(3) provides that material must be destroyed if it appears to the Chief Constable that the taking of it was unlawful or based on mistaken identity. The Chief Constable is expected to be proactive in that regard, but there would be nothing to prevent an individual who was convinced that his or her material had been taken in such circumstances from applying to the Chief Constable to have the material destroyed, and any refusal to do so would be challengeable by judicial review.

## Article 63C – Retention of Article 63B material pending investigation or proceedings

345. This Article enables Article 63B material taken from a person in connection with the investigation of an offence to be retained until the conclusion of the investigation by the police or, where legal proceedings are instituted against a person, until the conclusion of those proceedings (e.g. the point that charges are dropped or at the outcome of a trial).
346. GeneWatch UK recommended that the wording of this section is clarified so that individuals who have been ruled out of further inquiries do not have their data retained indefinitely in circumstances where a case is not closed (i.e. when an investigation may be continuing – perhaps for years - but the individual has been eliminated from inquiries).
347. **In discussing this Article with departmental officials the Committee sought clarification regarding the point at which the conclusion of an investigation is deemed to have occurred and raised concerns that the wording of this Article did not adequately reflect the intention of the provision.**
348. **The Department confirmed that the policy intention in relation to this provision was that the material should not be retained once it had been established that it is of no evidential value to the investigation. However, the Attorney General had asked that the original drafting be revised to permit the retention of material if it were likely to be probative against, for example, a co-defendant, rather than solely against the individual from whom it was taken. With that qualification, the Department agreed to consider the wording of the provision further and provide a draft amendment aimed at clarifying the intention.**
349. **The Department subsequently provided the wording of a draft amendment which aimed to clarify the provision by linking retention to the perceived utility of the material rather than to the conclusion of the investigation. The Committee considered the draft amendment and agreed that it was content to support the inclusion of it in the Bill at Consideration Stage.**

## Article 63D - Retention of Article 63B material: persons arrested for or charged with, a qualifying offence

350. This Article provides for the further retention of material taken from persons (both adults and juveniles) arrested for or charged with, but not convicted of, a qualifying offence. Where such

a person has previously been convicted of a recordable offence which is not an excluded offence, his or her fingerprints and DNA profile may be retained indefinitely.

**Presumption of innocence and due process**

351. In its submission the Children’s Law Centre strongly opposed the retention of fingerprints and DNA data of children who have not been convicted of an offence for which that material has been taken as part of the investigation into the offence and who are therefore innocent. It believes this to significantly undermine the presumption of innocence and due process, to be at odds with the ECHR’s Marper judgment and runs entirely contrary to the Government’s obligations under international standards.
352. In oral evidence the Children’s Law Centre stated that when considering what the provisions may look like in the legislation, it thought that there may be scope to apply articles 63D and 63E to adults only. Then, looking at a particular provision, if it was in the mind of the legislature to try to retain any DNA and fingerprints of children and young people, which the Children’s Law Centre opposes, then a specific clause should relate to children and young people that takes cognisance of some of the issues — hopefully, not cautions — of children who committed minor offences and are trying to get their life back on track. The Children’s Law Centre suggested that a child-specific clause may be needed that takes cognisance of what is in its view, the excellent work going on in other parts of the Department of Justice around diversion.
353. The Northern Ireland Children’s Commissioner stated that where a child or young person has not been convicted of, or even charged with an offence, their DNA and fingerprints should not be retained. To do so is to seriously undermine their right to a presumption of innocence until proven guilty, contravening Article 40 of the UNCRC.
354. The NIHRC recommended that the circumstances in which a person who had been arrested but not charged may have their DNA retained requires further consideration. The Commission also suggested that the Committee considers whether provision for the retention of DNA profiles of individuals charged or arrested with a qualifying offence appropriately safeguards the presumption of innocence.
355. The Evangelical Alliance stated that the legislation required amendment to ensure that when someone has been acquitted of a crime their sample and fingerprints are destroyed immediately.
356. GeneWatch UK broadly welcomed the proposed approach to implementing the judgment of the ECHR, however questioned whether it is necessary and proportionate to retain material for three years or more from persons who have merely been arrested and not charged with a qualifying offence.
357. GeneWatch suggested that the power to retain material for a three year period (with possible subsequent extension) is restricted to persons who are charged with a qualifying offence, not extended to those who are merely arrested. This would require the deletion of the words “arrested for, or” in 63D paragraph (1) (a) and the deletion of paragraph (5). This change might also allow the position of the Northern Ireland Biometric Commissioner to be dispensed with altogether, saving money, (including the police time that might be spent in making applications).
358. Opportunity Youth stated that Article 40 of the UNCRC affords all children the right to be presumed innocent until proven guilty according to law. The retention of the DNA and fingerprints of children, young people and adults, who have not been convicted of an offence, or may not even have been charged with an offence, entirely undermines their right to be presumed innocent until proven guilty.
359. NIACRO stated that the notion of retaining information from anyone who falls under the category of “non-convicted persons” is clearly offensive to the notion of innocence unless

and until guilt is proven. The entire justice system is based on the principle that every person, whether questioned, charged or otherwise suspected of an offence, is innocent, unless their guilt is proven within a court. It is NIACRO's view that the suggestion of retaining fingerprints from someone who is "charged with but not convicted" of any offence is quite blatantly disregarding the court's judgement in such a case.

360. The Northern Ireland Policing Board highlighted that the proposal that the DNA profiles and fingerprints of persons arrested but not charged of a serious offence may be retained for up to 3 years, extendable on application to a court by a further 2 years, was not proposed in the framework set out in the consultation document. Instead, the consultation document proposed that the DNA profiles and fingerprints of persons arrested but not charged would be destroyed immediately, regardless of seriousness of charge or extenuating circumstances. The change made in the Bill was advocated by the PSNI who felt that the threshold for retention in the consultation document for serious offences was too high. As a safeguard, the Bill proposes that if the Chief Constable wants to retain fingerprints or profiles of persons arrested for, but not convicted of, a serious offence to which prescribed circumstances apply, consent must be sought from the Biometric Commissioner.
361. The Department's position is that research suggests that those arrested but not convicted have a significantly higher risk of being convicted of a future offence than otherwise similar individuals who have not previously been arrested, and that this risk does not become the same as that of the general population until a period of 3 – 4¾ years has elapsed, depending on various factors. The research also offers some evidence, albeit less strong, of slightly higher risks of subsequent conviction for those charged with more serious – or 'qualifying' – offences. It is on this basis that a retention period of three years, extendable to five on application to the courts, has been proposed for individuals arrested for, but not convicted of, serious violent or sexual offences. Retention reflects not on the innocence of the individual of the offence for which they were arrested, but on the fact that they are, for the time being, part of a group that is at higher risk of future offending.
362. The Department stated that it is satisfied that some degree of retention in such cases is necessary in the interests of public protection, and has sought to put in place a risk-based system which is balanced and proportionate. Where conviction is not the outcome, only in cases involving serious offences will material be retained, and for a limited period of time; and safeguards will be put in place such that retention in cases involving an arrest but no charge will require independent consent. The Department confirmed that a significant volume of material from those arrested but not convicted will be destroyed, and the database will be primarily populated by those with previous convictions.
363. In response to the suggestion to apply articles 63D and 63E to adults only, the Department reiterated that the future offending risks for juveniles are higher than for adults. The retention periods for material from under-18s reflect a judgement as to where the fair balance lies between competing public and private interests. The Department confirmed that there is no question of anyone ever having to declare retention of their DNA or fingerprints, and that retention will not bring them into further contact with the justice system in the absence of further offending. The retention of biometric material should therefore have minimal impact on the rehabilitation of any individual, juvenile or adult.
364. In response to questioning by Committee Members on whether the provisions undermine the presumption of innocence and due process and are at odds with the ECHR's Marper judgement, the Department stated that this was the specific point upon which the ECHR made favourable reference to the practice in Scotland, and officials expressed the view that the Court clearly countenanced retention other than solely on conviction.
365. **Some Committee Members expressed reservations regarding the retention of material for those arrested or charged but not convicted of a qualifying offence on the basis that this undermines the presumption of innocence and due process. They indicated that they had serious concerns regarding whether the framework as proposed, particularly in relation to**

**people not convicted, is compatible with human rights standards and would not support this aspect of the retention framework. They intended to bring forward a number of amendments at Consideration Stage.**

366. **Other Committee Members supported the proposal which, in their view, was an appropriate approach which had been advocated by the PSNI, did not reflect on the innocence or otherwise of the individual and would assist in the detection and prevention of crime and therefore was in the interest of public protection.**

**Prescribed circumstances**

367. The Children's Law Centre highlighted that the 'prescribed circumstances' referred to in Article 63 D were not outlined within the draft Bill and found this lack of clarity concerning. The NIHRC also highlighted this issue and proposed that the circumstances in which an arrested persons fingerprints and DNA profile may be retained should be defined within the Bill and details of the evidential basis informing this approach should be provided.
368. In oral evidence the Commissioner indicated that the NIHRC accepted that there will be certain circumstances in the interests of public safety and public order under which even the data of unconvicted persons can be retained however the 'prescribed circumstances' need to be assessed from a human rights point of view particularly in relation to the rights of privacy and the presumption of innocence, which is why they should be specified on the face of the Bill.
369. The NICCY stated that clarification was required of the provisions which allow for retention in relation to a young person who has been arrested but not charged if 'prescribed circumstances apply'. The Commissioner highlighted the importance of ascertaining what the 'prescribed circumstances' might be and to consider whether the period of retention proposed is proportionate.
370. In its written submission NIACRO highlighted its concern that no description is provided of the 'prescribed circumstances' under which someone who is only arrested, and not even charged with, an offence should have their DNA or fingerprints retained. Whilst NIACRO supports the retention of relevant biometric material for the duration of any investigation, or consequent appeal, once such inquiries have been concluded, and a person's innocence retained, there does not appear to be any good reason for retaining their DNA or fingerprints alongside information about offences of which they were never convicted.
371. The PSNI noted that prescribed circumstances would be defined and made by a separate Order but will be analogous to Section 3 of the Protection of Freedoms Act. This permits application for retention to be made to an independent commissioner where the victim is (a) under 18; (b) a vulnerable adult; or (c) associated with a person to whom the material relates. A further provision of Section 3 permits an application to retain material where, when the foregoing conditions do not exist, the Chief Officer of police considers it necessary to assist in the prevention or detection of crime. A similar provision, although perhaps not as encompassing, would be to permit the Chief Constable to make an application for retention where a risk of harm exists and he considers it necessary for Public Safety.
372. The PSNI wishes to see the proposed Order reflect the provision in the Protection of Freedoms Act as closely as possible to give maximum protection within the framework.
373. The Assembly Examiner of Statutory Rules drew the attention of the Committee to the fact that Article 63D(5) was similar to corresponding amendments to the Police and Criminal Evidence Act 1984 for England and Wales, introduced by the Protection of Freedoms Act 2012 with one very material difference. The difference was that the legislation for England and Wales puts certain requirements on the face of the legislation whereas Article 63D(5) leaves it to subordinate legislation subject to negative resolution.

374. The Examiner of Statutory Rules was of the opinion that, given this is a substantive amendment of primary legislation, the circumstances relating to the application for the Commissioner's consent to retain fingerprints and DNA profiles should be set out on the face of the Bill with power to amend by way of subordinate legislation subject to affirmative resolution if necessary.
375. The Committee agreed to refer the Examiner's analysis to the Department for consideration.
376. **The Department subsequently confirmed that, in response to the concerns raised, particularly by the Examiner of Statutory Rules, it would set out the prescribed circumstances on the face of the Bill.**
377. **The prescribed circumstances would reflect those in the Protection of Freedoms Act 2012 with the exception, as described by the PSNI, of the second part of the provision. As the provision is aimed at protecting some of the most vulnerable in society, the Department considers that a formulation focusing closely on the protection of the public, rather than the broader prevention and detection of crime is appropriate and would relate exclusively to circumstances in which an individual has been arrested in connection with a serious violent or sexual offence, but where there is insufficient evidence to bring charges.**
378. **The Department subsequently provided a draft amendment setting out the prescribed circumstances.**
379. **Some Committee Members indicated that they were content with the draft amendment and would support its inclusion in the Bill. Other Members indicated that they would not support the amendment given it related to the retention of material of those arrested or charged but not convicted and the presumption of innocence issue previously highlighted.**

#### **Grounds for an Order and/or Appeal**

380. The NIHRC suggested in its submission that information on the grounds upon which an order may be sought or on which an appeal may be brought should be requested by the Committee.
381. The Department confirmed that grounds upon which an order may be sought would be an operational matter for the police. It would be for them to make the argument on a case-by-case basis, to the satisfaction of the courts.

#### **Biometric Commissioner**

382. In oral evidence the NIHRC stated it had no difficulty with the appointment of a Biometric Commissioner as it could make for a more efficient operation of the state, however, guarantees in the legislation that the Biometric Commissioner will carry out his or her responsibilities in a manner that is compliant with the human rights obligations of the United Kingdom is required. There should therefore be a statutory statement to that effect.
383. The Department confirmed that the Biometric Commissioner would be a "public authority" within the definition of section 6 of the Human Rights Act and will be obliged to observe the ECHR. It was the Department's view that the amendment proposed by the NIHRC is therefore not required.
384. Opportunity Youth stated that it fundamentally disagreed with the need for the introduction of a Biometric Commissioner and believed that the courts should be the ultimate arbiter of what should or should not be retained.
385. The Department confirmed that where the police are of the view that the prescribed circumstances apply, the Bill provides for them to seek the approval of a Biometric Commissioner to retain the material. The Department undertook to explore with the police and the courts the possibility of the proposed role of the Biometric Commissioner being undertaken by the courts.

386. Having considered the matter further the Department stated that, without experience of operating the new framework, the police had been unable to estimate the likely volume of cases once it is up and running, but anticipated that numbers could be considerable at start-up, as they process the historical abuse inquiries, along with other cases. Without a clear idea of the likely volume and the associated resource implications, the courts are understandably reluctant to take the business on.
387. The Department also indicated that if the courts were to accept the task, whilst reporting restrictions could be imposed, hearings would be public with a requirement on an applicant to make representations in court. The risk that public opinion would reach a view on their innocence might be seen to undermine the willingness of some to make such representations. The Department highlighted that it would remain the case that were the Commissioner to find against an applicant they would be entitled to seek judicial review of any such decision.
388. In the circumstances, the Department reached the conclusion that the Biometric Commissioner remains the preferred option for the time being and proposed to proceed on that basis, with an undertaking to keep the matter under review.
389. **The Committee indicated that it was content with that approach.**

### Article 63E – Retention of Article 63B material: persons arrested for or charged with a minor offence and 63F - Retention of Article 63B material: persons convicted of a recordable offence

390. Article 63E provides that the fingerprints and DNA profile of a person arrested for or charged with, but not convicted of, a recordable offence other than a qualifying offence may be retained indefinitely if the person has been convicted previously of a recordable offence, unless that earlier recordable offence was an excluded offence. If the person has no previous convictions the material will fall to be destroyed under Article 63B unless it can be retained under one of the other retention powers in the Bill.
391. Article 63F provides that a person's fingerprints or DNA profile may be retained indefinitely if convicted of a recordable offence except where a person under the age of 18 years at the time of the offence is convicted of a non-qualifying offence and has no previous convictions. In such a case the retention periods in new Article 63H will apply.
392. The evidence received related to both Articles 63E and 63F, and therefore both Articles will be discussed together in this section.

### **Necessity, proportionality and the scope of recordable offences**

393. GeneWatch UK questioned the necessity and proportionality of the provisions to retain material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. In GeneWatch's view time limits should be reintroduced for the retention of data from adults convicted or cautioned for a single minor offence and the retention regime for children should also be modified so that conviction or caution for more than one minor offence does not result in indefinite retention of material.
394. The NIHR also suggested that the Committee considers whether the indefinite retention of the fingerprints or DNA profile of an adult convicted of a recordable offence is fair and proportionate given the indiscriminate nature of this approach. The Commission also considered that it would be good practice to provide a right for individuals to apply for the destruction of their fingerprints and DNA.
395. The Commission questioned whether the proposals comply with recommendation No. R(87) 15 of the ECHR in the S and Marper case which states:

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*“Measures should be taken to ensure that the results of DNA analysis are deleted when it is no longer necessary to keep it for the purposes for which it was used. The results of DNA analysis and the information so derived may, however be retained where the individual concerned has been convicted of serious offences against the life, integrity or security of the persons.”*

396. The Commission also highlighted that the definition of ‘recordable offence’ contained within the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989 includes a wide range of offences and suggests that the Committee may wish to consider whether periods of retention should be staggered depending on the seriousness of the offence. The Commission suggested that consideration is given as to whether recordable offences should be further classified according to gravity. In oral evidence the Commissioner used the example of a person committed to prison for non-payment of a TV licence and another convicted of multiple murder to demonstrate the breadth of offences to which the provisions will apply and to illustrate the need for proportionate action.
397. The Commissioner stated his concern that by treating the situation of a convicted person in the manner that the Bill does, is, based on the evidence from the European Court, going too far. The Commissioner cited the example of a Netherlands case in which the court was very clear that you could not take a blanket approach to convicted persons and that the application of the principle of proportionality is demonstrated in each case where data is retained i.e. it is legitimate to retain material but a proportionate action in light of the convicted person’s right to privacy must be exhibited. It is the Commission’s view that this has not been taken into account in the Bill and the Commissioner suggested that the Bill is vulnerable to future legal challenge.
398. In response to concerns raised regarding the use of ‘recordable offences’ , the Department confirmed that under the powers in Part VI of PACE, a DNA sample and fingerprints may be taken on the arrest of an individual for a recordable offence (i.e. any offence which may attract a custodial sentence). The list of such offences covers a broad spectrum from the most serious possible to the less serious. However, there are many other offences which are non-recordable and so will not attract a custodial sentence, in respect of which the police have no power to take DNA or fingerprints, so there is a clear threshold.
399. The Department acknowledged the concerns expressed around the proportionality of allowing indefinite retention in respect of lesser offences. However, any police officer has to apply the principles of necessity and proportionality before making an arrest. Arrest is by no means the inevitable conclusion of the commission of a recordable offence. The power of arrest must be fully justified.
400. The Department stated that the framework contained in the Criminal Justice Bill sets the upper limits on the retention of biometric material in a range of circumstances. It permits indefinite retention on conviction for a recordable offence (as in the other UK jurisdictions); it does not require it. Within the boundaries established by the framework, the police have complete discretion over the retention of material. The judgment of the Supreme Court in the case of R (GC) (FC) v The Commissioner of Police of the Metropolis [2011] UKSC 21 makes clear that they are expected to exercise that discretion in a manner compatible with the ECHR. Rather than attempt to restrict the range of offences potentially resulting in the indefinite retention of material, the Department considers it appropriate to leave the matter to the professional judgement of the police.
401. Dr Moore raised concerns about the provisions regarding the long-term and sometimes indefinite retention of children’s fingerprints or DNA where children are convicted of minor offences or not convicted but have previous convictions. She believed such powers appear to be disproportionate and a potential breach of children’s human rights and civil liberties and stated that the holding of information indefinitely is not in keeping with the rehabilitative ideal, and the possibility of a fresh start in life.

402. NIACRO also raised concerns regarding the use of ‘recordable offence’ suggesting that using this definition will be the equivalent of employing a sledgehammer to crack a peanut. For not only does it include people convicted of minor offences who are never actually sent to prison, but could have been, it also includes people who are unable to pay a range of fines, or apparently those who commit a series of antiquated offences.
403. NIACRO pointed out that the Department of Justice is currently considering undertaking a review of the scope of “recordable” offences and recommends that this legislation is not commenced until after the outcome of that review to ensure any new definition is automatically incorporated.
404. NIACRO also highlighted that the provisions in the Bill in relation to indefinite retention should be consistent with existing legislation governing criminal records, that after various periods, in specific circumstances, certain convictions become “spent” and no longer have to be declared. The Bill should, therefore, differentiate between varying lengths of imprisonment and the nature of different offences, with the basic principle that biometric data should never be retained for longer than the relevant rehabilitation period.
405. The Department indicated that the Northern Ireland Criminal Records Working Group has been closely involved with the Home Office on various matters including the concept of the recordability of offences. Recommendations will go to Ministers as a result of this work. Early indications are that the focus of the recommendations will be not on imprisonable offences but on what non-imprisonable offences should also be considered recordable. The Department stated that the outcome of the review should not delay implementation of the proposed retention framework. The Department also indicated that the antiquated offences cited by NIACRO in its written submission to the Committee are not, in fact, recordable offences.
406. The Department stated that it is not inclined to link retention of biometric material to the reckoning of convictions for criminal record purposes as suggested by NIACRO. The Department confirmed the purposes of criminal records and the DNA and fingerprint databases are quite different and deliberately dissociated in the Bill. There is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.
407. The Commissioner for Children and Young People did not believe that the retention periods specified for a child or young person’s fingerprints and DNA sample constituted a proportionate response and recommended the Committee consider reducing the period of retention for young people who are convicted for a first minor offence.
408. In oral evidence the Commissioner stated that children and young people should be afforded maximum protection under the law however 5 years without adding on the period of the custodial sentence is a considerable period for a child or young person’s personal details to be retained by government and suggested that consideration be given to reducing the period of retention of DNA and Fingerprint material for young people who are convicted of a first minor offence.
409. The Children’s Law Centre is also of the view that the retention of fingerprints taken or a DNA profile derived in connection with the investigation of minor, recordable offences, which ultimately leads to the conviction of a child or young person, is not a proportionate response.
410. The Law Centre referred to a recommendation of the Council of Europe’s Committee of Ministers and by the European Court of Human Rights in the S and Marper judgement which sets out that the results of DNA analysis should be routinely deleted when no longer necessary to keep them for the purposes for which they were used, and that retentions should only take place:

*“where the individual concerned has been convicted of serious offences against the life, integrity or security of persons’ subject to “strict storage periods defined by domestic law”.*



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411. The Children's Law Centre pointed out that Articles 63 F and 63 H will apply to recordable offences, which the legislation acknowledges to be minor offences, rather than serious offences against life, integrity or security of persons and that to allow material to be potentially retained indefinitely in such circumstances would also not accord with the concept of it being retained subject only to strict storage periods.
412. In response the Department reiterated that any police officer has to apply the principles of necessity and proportionality before making an arrest. In cases where arrest and conviction are the outcome, then within the boundaries established by the framework, the police have discretion over the retention of material.
413. Given that the future offending risks for juveniles are higher than for adults, the Department does not consider individually-tailored retention of between five and ten years to be excessive for a first, minor offence, and considers it appropriate to leave the matter to the professional judgement of the police.
414. The Department stated that notwithstanding that the UK Government has signed up to Recommendation R(92)1 of the Council of Ministers, conviction for a recordable offence is the threshold permitting indefinite retention in the other UK jurisdictions and the Department remains convinced that it is the appropriate threshold for use here.
415. The Department went on to state that within the boundaries established by the framework, the police have complete discretion over the retention of material. However, that discretion must be exercised having regard to international human rights standards relevant to the criminal justice system.
416. Opportunity Youth also disagreed with the provisions that allows for the indefinite retention of fingerprints and DNA profile of children and young people and feels the retention of DNA should bear some relation to the seriousness of the offence, be subject to strict periods of storage and continually reviewed.
417. Opportunity Youth is concerned that the inclusion of minor offences or any offence punishable by imprisonment is so wide-reaching it has the potential to encompass a large section of society including people whose crimes are very much on the lower end of the scale such as fine defaulters. The principle of retaining such information indefinitely is contrary to much of the legislation governing the rehabilitation of offenders, which enables certain offences to be considered spent and removed from a person's criminal record. A tighter definition may be to have included all qualified recordable offences rather than a catch-all approach.
418. For adults who have one caution for a minor offence as part of their criminal record, and who received that caution for an offence that was committed when they were over 18, their fingerprints or DNA will be retained indefinitely when arrested for or charged with serious or minor offences even though they are not subsequently convicted. An adult who has their fingerprints or DNA taken in connection with a minor offence and receives a caution for that offence will have their fingerprints or DNA retained indefinitely. This again appears to be ill-measured and over the top.
419. The Department stated that where an adult has a conviction or a caution for a recordable offence, their fingerprints and DNA profile may be retained indefinitely. If they are subsequently arrested in connection with a further recordable offence and their profile and fingerprints have been retained, it is unlikely that a further DNA sample would be taken, as DNA does not change over time; but their fingerprints will be taken again as these may change over time. Whatever the outcome in relation to this particular investigation, that material may be retained indefinitely on the basis of the earlier conviction, the purpose being to ensure that existing, lawfully-held records are as up-to-date as possible.
420. During oral evidence departmental officials highlighted the outcome of a recent judgement in the High Court that found that the policy of indefinite retention of data of convicted offenders by a substantial category of offences was not disproportionate and was lawful and rational.
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421. The officials outlined that the judgement identified the factors that needed to be taken into account in considering the question of proportionality and it identified 11 in all, only one of which focused on the particular circumstances of the case. It found that the build-up of the database of those convicted was an entirely rational step and furthered the legitimate aim of countering crime in order to protect the lives and rights of others and the approach could not be considered blanket or indiscriminate because it ruled out those not convicted, and those convicted of lesser offences, of which there are many. The judgement also drew out the very limited impact of the retention and the use of such material in a person's 'real private life'.
422. The Department viewed the judgement as supportive of the policy in relation to the retention of fingerprints, DNA etc. as set out in the Bill and of the practice in the other UK jurisdictions.
423. **Some Committee Members indicated that they were content with the retention proposals as set out in Articles 63G and 63F, noting that the recent High Court judgement had found that the policy of indefinite retention in a substantial category of offences is not disproportionate.**
424. **Other Committee Members expressed concerns regarding whether the approach was proportionate and necessary and whether it complied with the ECHR ruling in the S and Marper case. They indicated that they would not support this aspect of the retention framework.**

#### **Appeals/Complaints**

425. The NIHRC also raised concerns that the legislation did not provide for a clear straightforward process whereby an aggrieved person can make a complaint to court. The Commissioner outlined the current situation where a person can apply to the Chief Constable who, through an internal police administrative procedure, can determine whether the data will be retained. Judicial Review is the only appeal to the Chief Constable's decision which is one of the least efficient and most expensive ways to get justice. The NIHRC suggested a procedure whereby the court or, in the first instance, the Biometric Commissioner has a clear, well-publicised step-by-step process through which an aggrieved person could make a petition that would be assessed according to clear criteria. Based on the outcome the person should have a route not into the High Court but into a lower court, where the costs are lower and the whole proceeding is more efficient, straightforward and speedy.
426. Opportunity Youth also sought further clarity around the appeals process highlighting that an appeal seemed only available in the instances where a Chief Constable seeks leave to extend three-year retention by a further two years and states that appeals should be available in all cases.
427. On the question of review, the Department confirmed that it is open to anyone – under the current system and under the proposed framework – to apply to the police to have their material removed. No specific review mechanism is included within the framework because any refusal by the police to remove material from the database would be challengeable by judicial review and the Department stated it has always been of the view that that should be sufficient. The same is true of the framework set out for England and Wales in the Protection of Freedoms Act 2012. Commenting on that framework at its 1115th meeting on 26 May 2011, the Committee of Ministers of the Council of Europe concluded that—

*'Whilst no possibility of individualised review has been created, . . . in the context of the revised proposals judicial review should provide a sufficient procedural safeguard.'*

## Article 63 H – Retention of Article 63B material: exception for persons under 18 convicted of first minor offence

428. This Article makes provision for the retention of fingerprints and DNA profiles of persons convicted of a minor offence (a recordable offence that is not a qualifying offence) committed while under the age of 18.
429. In oral evidence the Children’s Law Centre stated that Article 63H proposes to link the amount of time that a child or young person’s fingerprints or DNA are retained to the length of their sentence, where the child is being convicted of a first minor offence. Article 63H also allows for the retention of fingerprints and DNA where children are given non-custodial sentences in respect of a first minor offence. The Law Centre does not believe that the retention of fingerprints taken or DNA profile derived in connection with the investigation of minor recordable offences, where the child or young person is subsequently convicted, is a proportionate response. The Centre also questioned whether there is potential for the fingerprints and DNA to be retained for 5 years for a child who receives their first caution.
430. The Department confirmed that a caution is treated as a conviction for the purposes of the retention framework. In the case of a juvenile receiving a caution for a first, minor offence, the framework allows the material to be retained for up to five years, at the discretion of the police.
431. The issue of how the inclusion of cautions as a recordable offence would specifically affect children and young people was discussed during the oral evidence session with the Children’s Law Centre. The Law Centre suggested that there should be a qualifying provision in the legislation to say that cautions as they relate to children and young people should not be considered as a recordable offence and should be excluded from it.
432. **Some Committee Members raised specific concerns regarding the inclusion of cautions in the retention framework. These are outlined in more detail under Schedule 3 of the Bill.**

## Article 63 L - Destruction of copies

433. This Article requires that if fingerprints are required to be destroyed under the retention framework then any copies must also be destroyed. Similarly, if a DNA profile is to be destroyed, no copy may be kept except in a form that does not identify the person to whom the profile relates.
434. GeneWatch stated that this provision allows police to retain copies of DNA profiles provided the individual cannot be identified from them: but in practice anonymising DNA profiles may be impossible. In England and Wales, the inclusion in the Protection of Freedoms Act of a similar provision has been contentious and the decision to allow the retention of copies has led to some loss of public trust in the protection provided by the Act.
435. GeneWatch recommended that the status and use of batch files created at FSNI is clarified, preferably with the assistance of the Information Commissioner’s Office Northern Ireland, including: (i) whether or not such batch files are in practice created and retained at FSNI; and (ii) whether indefinite retention of such files is really necessary and proportionate. A revised provision should then be introduced which ideally eliminates the retention of copies altogether or, at minimum, provides a time limit or other restrictions on the retention of such data.
436. The Department stated that one of the requirements placed upon FSNI for accreditation purposes is that analytical records be maintained that map the process from sample in to profile out. Subject samples are processed in batches and it is not possible to delete single profiles from the rest of the batch.

437. In acknowledgement of that, a new processing identifier has been introduced so that forensic records are no longer associated with the original sample barcode but with a separate, self-generated barcode connected to the sample barcode by an electronic key. On receipt of a deletion instruction, FSNI erases the database entry and deletes the key: there remains no link between the original sample identifier and FSNI analytical records.
438. The Department drew to the attention of the Committee correspondence from the Chairman of the National DNA Database Strategy Board which confirms that —

*‘The Information Commissioner is satisfied ... that the deletion of the associated records will remove the link between the identity of the individual and the data which will be retained in the batch on the electropherogram. This will effectively put the retained data ... beyond practical use as it should be no longer possible to re-link the individual to the data retained and even though it is still capable of being personal data the privacy and compliance risks become negligible in practice.’*

### Article 63 M - Destruction of samples

439. This Article requires DNA samples to be destroyed as soon as a DNA profile has been derived from the sample, and no later than 6 months from the date on which it was taken, with an exception for temporary retention where the sample is likely to be needed in proceedings. Any other sample, for example, dental or skin impressions, must also be destroyed within 6 months of being taken. The time within which material is to be destroyed will be subject to the time required to carry out a search against the material.
440. GeneWatch UK welcomed the provisions for the destruction of samples once the computerised DNA profiles needed for identification purposes have been obtained from them. In its view this is an important protection for privacy and human rights because stored DNA samples contain unlimited genetic information, including health-related information. Temporary retention of samples is necessary for quality assurance purposes and the stated period of six months’ retention is clearly adequate. It is GeneWatch UK’s view that adoption of this provision is in line with best practice internationally.

### Article 63 N - Use of retained material

441. This Article restricts the use to which fingerprints, DNA and other samples, such as DNA profiles may be put during the period in which they are retained.
442. GeneWatch UK stated that there is a problem with the phrase “purposes related to” the prevention or detection of crime as it can be interpreted broadly and is open to abuse. In England and Wales, this phrase was used to allow controversial research attempting to predict people’s ethnic appearance from their DNA profiles, on the grounds that such research involved a purpose related to the prevention or detection of crime. Genewatch stated such research is unethical and recommended that an additional clause is added to specifically prevent such uses.
443. GeneWatch also stated that the use of material to identify “the person to whom the material relates” is also open to abuse. It is GeneWatch UK’s view that this use goes beyond the identification of deceased persons and body parts to allow the identification of living persons who are not suspected of committing a crime. GeneWatch recommended that the phrase “the person to whom the material relates” should therefore be deleted and replaced with “body parts”.
444. In response the Department clarified that there is nothing in a DNA profile that definitively identifies any characteristic other than gender, stating that much more information – for example, about race or health – is available from the biological DNA sample and it is

expressly in recognition of the sensitivities around that that the Bill provides for samples to be retained for no longer than 6 months, unless likely to be needed in proceedings.

445. The Department considered that confirming a person's identity or, indeed, establishing that they have previously been arrested under a different name are entirely legitimate uses of biometric material.

## New Provision relating to Penalty Notices

446. The Department advised the Committee in a letter dated 1 November 2012 that it intended to bring forward an amendment to make provision permitting limited retention (2 years) in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. That provision was commenced on 6 June 2012 and it is the Department's view that penalty notices should be reflected in the retention framework. The Department confirmed that Section 18D of the Criminal Procedure (Scotland) Act 1995 and section 63L of the Police and Criminal Evidence Act 1984 (as inserted by section 8 of the Protection of Freedoms Act 2012) make corresponding provision.
447. In oral evidence departmental officials outlined that if a person was arrested for a recordable offence his/her fingerprints and DNA would be taken. In the event of a penalty notice being the disposal used, the two year retention provision would apply. The officials clarified that generally penalty notices would be issued without an arrest but in those cases in which an arrest was effected the retention provision would apply. The Department subsequently provided the wording of the draft amendment.
448. **Some Committee Members indicated that they were content for provision to be made allowing limited retention in relation to penalty notices and agreed to support the inclusion of the amendment, as drafted, in the Bill. Other Members indicated that they had concerns regarding retention in relation to cases where a penalty notice has been issued on the same basis as cautions and they would not support the inclusion of the proposed amendment.**

## Schedule 3

### Paragraph 3

449. Paragraph 3 inserts a new Article 53B to PACENI to provide a number of interpretational provisions relevant to the application of the new retention framework.
450. The Children's Law Centre pointed out in its submission that cautions do not have the same status as convictions under other aspects of the criminal law and has concerns that various parts of the proposed legislation effectively mean that a child who receives two cautions for minor, recordable offences will have their fingerprints or DNA profile retained indefinitely.
451. It is the view of the Children's Law Centre that considering cautions in this way is an entirely disproportionate course of action and runs contrary to the purported purpose of a caution which is to divert children away from the criminal justice system. Whilst highlighting in oral evidence that the Children's Law Centre does not believe that cautions adequately divert children away from the criminal justice system at present (instead diverting children from one part of the system to another) the Law Centre does believe that the situation will be exacerbated if the use of cautions results in a child's fingerprints and DNA profile being retained indefinitely.
452. The Law Centre pointed out that the Public Prosecution Service code for prosecutors makes it clear that cautions are not a conviction: They are recorded on the criminal record of a child

for 30 months and on that of an adult for 5 years and there is therefore some disconnect between the Bill and what happens under other aspects of the law.

453. The NICCY is also concerned that the Bill includes a caution within the definition of an offence for which a person is convicted. Given that the purpose of a caution is to divert young people away from the criminal justice system, it is the Commissioner's view that the inclusion of cautions under the definition of offences is inappropriate and disproportionate.
454. The Children's Commissioner stated that cautions as they apply to children and young people should not be considered as a recordable offence in the legislation and should be excluded from it. This position is in compliance with the recommendations of the youth justice review that cautions, along with other convictions as they relate to children and young people should be wiped clean when they reach 18. There should be a qualifying provision in the legislation to say that cautions as they relate to children and young people under the age of 18 should not be treated as a recordable offence.
455. Opportunity Youth stated that it is particularly concerning that the Bill includes 'cautions for offences' within the 'definition of persons convicted of an offence'. It is Opportunity Youth's view that this clearly suggests that a child or young person who has more than one caution as part of their criminal record will have their fingerprints or DNA retained indefinitely if arrested or charged with serious or even minor offences, or will have the material retained indefinitely if it is taken in relation to a second minor offence for which they are given a caution, having already received a caution previously. Opportunity Youth believes this to be entirely disproportionate, running contrary to the purpose of a caution, which is to divert children away from the criminal justice system.
456. NIACRO indicated that the approach in the Bill relating to convicted under 18s is entirely inconsistent with the spirit of the Youth Justice Review, which recommended that criminal records be "wiped" when a young person turns 18. The idea of retaining a young person's biometric data for five years after even a caution is clearly disproportionate, and sits in opposition to any attempt to divert young people from the justice system. NIACRO stated that if the system is committed to de-criminalising young people, it should not be seeking to build or retain any such profiles, for five years or any longer period.
457. GeneWatch UK also highlighted that the Bill treats persons who have been cautioned as if they are convicted. GeneWatch suggested that more consideration should be given to whether this is necessary and proportionate.
458. The Department confirmed that a caution is treated as being equivalent to a conviction for the purposes of the retention of DNA profiles and fingerprints because it involves acceptance of guilt. It is the Department's position that there is no logical basis for treating it otherwise for the purposes of the DNA and fingerprint databases, which are, as previously observed, quite different from criminal records.
459. The Department stated that recommendations around a clean slate on reaching the age of 18 are in the context of removing obstacles to future employment and rehabilitation in society and confirmed there is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.
460. **Some Committee Members expressed concerns about the inclusion of a caution within the definition of an offence. While noting that when a person is cautioned and accepts a caution, it involves an acceptance of guilt, they viewed the treatment of cautions as a conviction in the retention framework as inappropriate and in some way affecting the purpose of a caution. They had particular concerns in relation to children and young people where the use of cautions is aimed at trying to redirect them away from reoffending. They indicated that they would not support the inclusion of cautions in the retention framework.**

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461. **Other Members were content with the inclusion of retention in relation to a caution on the basis that it would assist crime prevention and detection and that retention of DNA etc. is not the same as a criminal record in that it would not be disclosed.**

### Diversionsary Youth Conferences

462. The Department advised the Committee in a letter dated 1 November that it intended to bring forward an amendment to bring completion of a diversionary youth conference within the framework on the same basis as a caution. The Department indicated that both these disposals require acceptance of guilt on the part of the offender and so are treated as convictions for the purposes of the retention framework.
463. **Some Committee Members had the same concerns regarding the inclusion of completion of a diversionary youth conference within the framework as they had with the inclusion of cautions while others were content with the Department's proposal.**

### Drafting Error

464. The Department brought to the attention of the Committee an incorrect reference in paragraph 6 of Schedule 3 -18(8)(b)' should read '18(8)(c)' – and confirmed that it would bring forward an amendment to correct the drafting error.
465. **The Committee considered the wording of the draft amendment to correct the error and agreed that it was content to support it.**

## Consideration of Other Proposed Provisions for Inclusion in the Bill

466. Four proposals for new provisions unrelated to the policy areas currently covered in the Criminal Justice Bill have been considered by the Committee during the Committee Stage of the Bill.
467. The Department of Justice advised the Committee of its intention to introduce two new provisions relating to registered intermediaries schemes and Article 45 detention orders by way of amendments at Consideration Stage. A proposal relating to a change in firearms legislation arose from written evidence received from Ian McCrea MLA and another relates to a policy change regarding the offence of scandalising the court that the Committee wishes to introduce.

### Registered Intermediaries Schemes

468. Article 17 of the Criminal Evidence (Northern Ireland) Order 1999, (the 1999 Order), provides for a number of special measures (including the use of intermediaries) to assist vulnerable witnesses give their best possible evidence in criminal proceedings. Section 12 of the Justice Act (Northern Ireland) 2011 also provides for the examination of the accused through an intermediary. An intermediary is a professional person who ensures that complete, coherent and accurate communication takes place at the investigation and trial stages of a case.
469. The Department plans to introduce Registered Intermediaries Schemes by way of a pilot scheme in the first instance in the Crown Court sitting in Belfast to enable an assessment to be completed in terms of effectiveness and financial viability and a clearer view formed of the likely uptake and associated costs across Northern Ireland and in the other court tiers.
470. Before a court introduces a new special measure (such as the use of intermediaries) Article 6 of the 1999 Order provides that a statutory notice must be issued to a specified court directing that it provides the relevant special measure. The Article also provides for that notice to be withdrawn, which would cease the use of the special measure.
471. Once Article 6 is commenced it will enable the pilot scheme for Registered Intermediaries for vulnerable witnesses to be started and also suspended should the evaluation of the pilot scheme conclude that some amendment to its operation is required or funding becomes an issue.
472. The making of a similar provision in respect of vulnerable defendants through section 12 of the Justice Act (Northern Ireland) 2011 has however been overlooked. The Department therefore proposes to address this omission by introducing a new clause into the Criminal Justice Bill to make provision for the issue and withdrawal of notices in relation to the examination of vulnerable defendants through an intermediary.
473. **The Committee considered the proposed new provision and, noting that the Department considered that it was unlikely that the power to suspend the scheme would need to be exercised but it was prudent to have the safeguard in place, agreed that it was content to support the inclusion of the new clause in the Criminal Justice Bill.**

### Statutory Prohibitions on Holding Firearms

474. In response to the Committee's call for evidence in relation to the Criminal Justice Bill Ian McCrea MLA wrote requesting that the Committee include a miscellaneous provision in the Bill relating to statutory prohibitions on holding firearms.



475. Mr McCrea outlined that there is currently an 8 year prohibition or a life prohibition on a person from purchasing, acquiring or possessing a firearm and ammunition at any time if they are sentenced or a suspended sentence is imposed. Both prohibition tariffs can be appealed under Article 63 of the Firearms (Northern Ireland) Order 2004 but appeals prove extremely difficult to achieve. Mr McCrea wished to see the introduction of a tariff that was varied to reflect more accurately the seriousness of the offence rather than those convicted of a non violent offence receiving the same tariff as those convicted of violent/serious offences. In his view this would provide for a fairer system.
476. As the Criminal Justice Bill as currently drafted does not cover firearms legislation the Committee sought advice on whether the scope of the Bill was wide enough to accommodate such an amendment. Upon being informed that the scope of the Bill is wide ranging given that it already covers a range of criminal justice matters and therefore the provision may be included if considered appropriate the Committee agreed to seek the views of the Department of Justice on the proposal.
477. The Department indicated that the present system of prohibition operates for prison sentences of three months or more (including suspended sentences) rather than on the offence itself.
478. It set out the current position which, under Article 63 of the Firearms (Northern Ireland) Order 2004, prohibits a person from purchasing, acquiring or possessing a firearm and ammunition at any time if he has been sentenced to imprisonment, or detention in a young offenders centre, for a term of three years or more. It also prohibits a person who has been sentenced to imprisonment, or detention in a young offenders centre or juvenile justice centre, for a term of three months or more but less than three years, for a period of eight years from the date of conviction. The Department highlighted that a prohibited person may apply for the removal of a prohibition and the Minister will reach a decision using all available information including information on the offence that led to the prohibition, information on all other criminal convictions etc. The underlying principle is that those who receive a prison sentence of three months or more are not suitable to hold a firearm unless strong evidence can be produced to the contrary.
479. According to the Department, a difficulty in moving to an offence based approach, as proposed by Mr McCrea, is the problem of “ranking” offences and the development of such an approach would, in its view, be likely to require significant work. It also pointed out that any changes would require the agreement of the Secretary of State for Northern Ireland as prohibitions for offences relating to national security are referred to her for consideration.
480. The Department proposed that if the Committee concluded that Article 63 required reviewing then a consultation should be conducted to allow the Minister and others to give serious consideration to the proposal and what could be very significant consequences. This could not be concluded within the timescale of the Criminal Justice Bill.
481. **The Committee noted the position of the Department on this matter and agreed to consider the proposal further once the consultation being undertaken on a range of issues relating to firearms, including fees, by the Department has been concluded in February/March 2013 rather than in the context of this Bill.**

### Offence of Scandalising the Court

482. The offence of scandalising the court, also known as scandalising judges or scandalising the judiciary, is a form of contempt of court. The rationale for such an offence derives from the need to uphold public confidence in the administration of justice.
483. In March 2012 the Attorney General for Northern Ireland brought a prosecution against Peter Hain MP for the common law offence of scandalising the court for statements he made in his

book 'Outside In' in which he criticised a judge. The prosecution attracted significant media and political interest at the time with questions being raised regarding the right to freedom of expression and such criticism being regarded as "political speech" and therefore, under the European Convention on Human Rights, subject to the highest degree of protection, although not absolute and whether the offence was obsolete. The Court was invited to make no order after Mr Hain clarified the intention behind his remarks.

484. The prosecution prompted an amendment to be laid in the House of Lords in relation to the Crime and Courts Bill proposing the repeal, without replacement, of the offence of scandalising the court for England, Wales and Northern Ireland. The amendment, brought forward by Lord Pannick QC, was subsequently withdrawn at Committee Stage to allow the Government time to consider the matter.
485. The Minister of Justice wrote to the Committee in September 2012 informing it that the Minister of State, Lord McNally, had advised that, having considered and consulted on the issue the Government was minded to support the amendment and wished to know if Northern Ireland wanted to be included in it. The Minister reminded the Committee of his preference for local legislation and indicated that he considered that it would be more appropriate for this matter to be looked at separately in a Northern Ireland context, particularly as England and Wales had the benefit of a consultation on the matter (undertaken by their Law Commission). He had therefore advised Lord McNally that Northern Ireland should not be included in the Crime and Courts Bill and had asked his officials to take forward work to seek views on this in Northern Ireland. When asked by the Committee for the timescale for completion of this work the Minister indicated that, subject to any other competing priorities, he planned to take forward a consultation on the issue in the New Year.
486. The Committee considered the matter and was of the view that the Criminal Justice Bill could provide an appropriate vehicle in which to take forward the repeal of this offence. The Committee agreed that an amendment should be drafted on this basis and advice sought on whether such an amendment would fall within the scope of the Bill.
487. The Committee also agreed to seek the views of the Attorney General for Northern Ireland given his interest in the matter and noted the results of the consultation undertaken by the Law Commission in England and Wales<sup>3</sup> in which there was general support for abolition of the offence in those jurisdictions.
488. The Attorney General, in his response, outlined that, in his view, the Criminal Justice Bill may provide an opportunity to recast scandalising contempt in statutory form rather than repealing the offence.
489. The Attorney General highlighted that his concern was with the protection of public confidence in the administration of justice. He stated that, while there was nothing improper about well-informed and robust criticism of the administration of justice, endangering public confidence unjustifiably causes the kind of social harm for which a public law remedy ought to exist.
490. The Attorney General was of the opinion that the law of scandalising the court in its present form is neither particularly accessible nor widely understood and statutory provision in this area would remove any current uncertainties and promote public awareness of rights and responsibilities in relation to criticism of judges. He expressed the view that a modern name for this type of contempt such as 'undermining public confidence in the administration of justice' would be of assistance. Statutory provision could make the defence of truth explicit and also provide for a defence of honest and reasonable belief.
491. The Attorney General also highlighted that the recent consultation undertaken by the Law Commission in England and Wales had concluded that it was unlikely that the European Court

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<http://lawcommission.justice.gov.uk/consultations/scandalising.htm>

of Human Rights would find the existence of the offence of scandalising incompatible with the European Convention on Human Rights, an analysis which he agreed with.

492. The Committee subsequently considered the wording of a draft amendment to abolish the offence of scandalising the court and noted that, as the offence was not entirely a criminal justice matter, there may be some issue regarding the admissibility of the amendment in relation to the Criminal Justice Bill.

493. **The Committee agreed that it wished to see the offence of scandalising the court abolished in Northern Ireland and was content with the amendment as drafted. Given that there may be an issue with the admissibility of the amendment in relation to this Bill the Committee agreed to write to the Speaker prior to Consideration Stage and seek his view before tabling it. If the amendment is deemed not to be admissible in this Bill the Committee will take the issue forward in the Faster, Fairer Justice Bill which the Minister intends to introduce into the Assembly in 2013.**

### Article 45 Detention Orders

494. Just before its final clause by clause decisions on the Bill, the Department provided the wording of draft clauses that it intends to insert after clause 7 of the Bill and a departmental official attended the meeting on 6 December to briefly outline the proposed new provisions.

495. The new clauses will amend the Criminal Justice (Children) (Northern Ireland) Order 1998 to rectify a possible incompatibility with the European Convention on Human Rights concerning licence arrangements relating to the release of young offenders convicted of certain serious crimes.

496. Article 45 detention orders are used infrequently for children convicted of very serious offences. The order is a 'whole term' disposal and, under existing legislation, matters relating to release on licence and recall to custody are determined by the Minister of Justice without reference to an independent judicial body or process.

497. The Department indicated that a legal challenge around an existing case has exposed that the legislation is unlikely to be ECHR-compliant and it is therefore proposing amendments to remedy this by aligning the Article 45(2) provisions with those associated with other similar custodial orders which provide for release on licence and an independent judicial involvement.

498. Under the new provision the sentencing judge will fix a custodial period after which the Parole Commissioners will determine whether the detainee should be released on licence or recalled to custody if that is required. According to the Department the principal test will be the protection of the public.

499. **Having very briefly considered the proposed new provisions the Committee agreed that it was content to support their inclusion in the Criminal Justice Bill.**

## Clause by Clause Consideration of the Bill

500. The Committee conducted its clause by clause consideration of the Bill on 6 December 2012 – see Minutes of Proceedings in Appendix 1 and Minutes of Evidence in Appendix 2. The Committee supported a number of departmental amendments and recommended the inclusion of a new provision.
501. Some Members indicated that they were unable to support Clause 7 and Schedules 2 and 3 which bring in a new Fingerprint, DNA etc. retention framework and highlighted their intention to bring forward amendments to this part of the Bill at Consideration Stage.
502. Information on the Committee’s deliberations on the individual clauses in the Bill, which sets out the context to the decisions reached by the Committee, can be found in the previous section of this report.

### **Clause 1 – Review of indefinite offender notification requirements**

503. Agreed: the Committee is content with clause 1 as drafted.

### **New Clause**

504. The Department proposed to insert a new clause in the Bill after clause 1 to address a gap in current legislation concerning details and information to be provided to the PSNI by offenders who travel within the UK.

### **New Clause**

*After clause 1 insert—*

*‘Notification requirements: absence from notified residence  
.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.*

*(2) After section 85 insert—*

*‘Notification requirements: absence from notified residence  
85A.—(1) This section applies to a relevant offender at any time if the last home address notified by him under section 83(1), 84(1) or 85(1) was an address in Northern Ireland such as is mentioned in section 83(7)(a) (sole or main residence).*

*(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days (“the relevant period”), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).*

*(3) The information is—*

- (a) the date on which the relevant offender will leave that home address;*
- (b) such details as the relevant offender holds about—*
  - (i) his travel arrangements during the relevant period;*
  - (ii) his accommodation arrangements during that period;*
  - (iii) his date of return to that home address.*

*(4) In this section—*

*“travel arrangements” include, in particular, details of the means of transport to be used and the dates of travel, “accommodation arrangements” include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.*

*(5) Where—*

- (a) a relevant offender has given a notification under subsection (2); and*
- (b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete, the relevant offender must give a further notification under subsection (2).*

(6) Where a relevant offender—

(a) has notified a date of return to his home address, but

(b) returns to his home address on a date other than that notified, the relevant offender must notify, the date of his actual return to the police within 3 days of his actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 86.

(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

(a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 83(5)(g) notified to the police under section 83 or 85;

(b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 84(l)(c).

(9) This section applies in relation to any relevant period which begins on or after the day after the coming into operation of section (Notification requirements: absence from notified residence,) of the Criminal Justice Act (Northern Ireland) 2012.”.

(3) In section 87(1) and (4) (method of notification) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

(4) In section 91 (offences)—

(a) in subsection (1)(a) after 85(1) insert “, 85A(2) or (6)”;

(b) in subsection (1)(b) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”;

(c) in subsection (3) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

505. Agreed: the Committee is content with the new clause proposed by the Department.

**Clause 2 – Ending notification requirements for acts which are no longer offences**

506. Agreed: the Committee is content with clause 2 as drafted.

**Clause 3 - Offences committed in an EEA State other than the United Kingdom**

507. Agreed: the Committee is content with clause 3 subject to the amendment proposed by the Department to address concerns raised by the Executive and the Attorney General in relation to offences committed in an EEA State other than the United Kingdom as follows:

Clause 3, page 2, line 31

Leave out ‘an EEA State other than’ and insert ‘a country outside’

Clause 3, page 2, line 32

Leave out an EEA State other than’ and insert ‘a country outside’

Clause 3, page 2, line 35

Leave out ‘an EEA State other than’ and insert ‘a country outside’

Clause 3, page 3, line 14

Leave out ‘State’ and insert ‘country’

Clause 3, page 3, line 24

Leave out ‘to the modifications set out below’ and insert

(a) in all cases, to the modifications set out below; and

(b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 96B.’

Clause 3, page 4, line 18  
Leave out 'State' and insert 'country'

Clause 3, page 4, line 24  
Leave out 'an EEA State other than' and insert 'a country outside'

Clause 3, page 4, line 25 at end insert—  
'Offences committed in a country which is not a member of the Council of Europe  
96B.—(1) The further provisions referred to in section 96A(5)(b) are as follows.  
(2) Where P is charged with an offence under section 97(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).  
(3) P shall cease to be subject to the notification requirements of this Part by virtue of section 96A if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).

(4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied—  
(a) that any investigation or proceedings leading to it was conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the United Kingdom; and  
(b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 96A(2).

(5) In this section—  
"the relevant conviction, finding or caution" means the conviction, finding or caution by reason of which P is subject, by virtue of section 96A, to the notification requirements of this Part; "the relevant court" means—  
(a) in a case to which subsection (2) applies, the court before which P is charged;  
(b) in a case to which subsection (3) applies, the High Court."

Clause 3, page 4, line 26  
Leave out from beginning to 'section 97' in line 29 and insert—  
'(3) Omit sections 97 to 101 (notification orders).  
(4) Subsection (3) (and the related repeals in Part I of Schedule 4) do not affect the validity or effect of any order made under section 97 or IOU

Clause 3, page 4  
Leave out line 33 and insert for "98" substitute "96A(6)."

**Clause 4 – Sexual offences prevention orders**

508. Agreed: the Committee is content with clause 4 as drafted.

**Clause 5 – Trafficking people for sexual exploitation**

509. Agreed: the Committee is content with clause 5 as drafted.

**Clause 6 – Trafficking people for other exploitation**

510. Agreed: the Committee is content with clause 6 as drafted.

**Clause 7 – Retention of fingerprints, DNA profiles etc.**

511. Agreed: the Committee is content with clause 7 as drafted.

**New Clauses**

512. The Department proposed to introduce a new clause in the Bill after clause 7 to make provision for the issue and withdrawal of notices in relation to the examination of vulnerable defendants through a Registered Intermediary.

**New Clause**

After clause 7 insert—

**‘Examination of accused through intermediary**

.—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) At the beginning of paragraph (2) insert “Subject to paragraph (2A),”.

(3) After paragraph (2) insert—

“(2A) A court may not give a direction under paragraph (3) unless—

(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court, and

(b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn.”.

513. Agreed: the Committee is content with the new clause proposed by the Department.
514. The Department proposed to introduce a new clause in the Bill after clause 7 to amend the Criminal Justice (Children) (Northern Ireland) Order 1998 to rectify a possible incompatibility with the European Convention on Human Rights concerning licence arrangements relating to the release of young offenders convicted of certain serious crimes.

**New Clause**

After Clause 7 insert—

**‘Release on licence of child convicted of serious offence**

.—(1) In Article 45(2) of the Criminal Justice (Northern Ireland) Order 1998 (child convicted of serious offence) for “notwithstanding any other provisions of this Order” substitute “subject to Articles 46 to 46B”.

(2) In Article 45 of that Order after paragraph (2) insert—

“(2A) Where a court passes a sentence under paragraph (2), the court shall specify such part of the sentence as the court considers appropriate as the relevant part of the sentence for the purposes of Article 46 (release on licence).”.

(3) For Article 46 of that Order substitute—

**“Release on licence**

46.—(1) In this Article—

(a) “P” means a person detained under Article 45(2);

(b) “the Commissioners” means the Parole Commissioners for Northern Ireland;

(c) “the Department” means the Department of Justice; and

(d) references to the relevant part of P’s sentence are references to the part of P’s sentence specified as such under Article 45(2A).

(2) As soon as—

(a) P has served the relevant part of P’s sentence; and

(b) the Commissioners have directed P’s release under this Article, the Department shall release P on licence.

(3) The Commissioners shall not give a direction under paragraph (2) with respect to P unless—

(a) the Department has referred P’s case to the Commissioners; and

(b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(4) *P* may require the Department to refer *P*'s case to the Commissioners at any time—  
(a) after *P* has served the relevant part of *P*'s sentence; and  
(b) where there has been a previous reference of *P*'s case to the Commissioners under paragraph (3) or Article 46B(4), after the end of the period of 12 months beginning with the disposal of that reference.

(5) In determining for the purpose of this Article whether *P* has served the relevant part of *P*'s sentence, no account shall be taken of any time during which *P* was unlawfully at large, unless the Department otherwise directs.

(6) The Department may at any time release *P* on licence if it is satisfied that exceptional circumstances exist which justify *P*'s release on compassionate grounds.

(7) Before releasing *P* under paragraph (6), the Department shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.

(8) Nothing in this Article requires the Department to release a person in respect of a sentence under Article 45(2) at any time when that person is liable to be detained in respect of any other sentence.

#### **Duration and conditions of licences under Article 46**

46A.—(1) Where a person is released on licence under Article 46, the licence shall, unless previously revoked under Article 46B, remain in force until the expiry of the period for which the person was sentenced to be detained.

(2) A person released on licence under Article 46 shall comply with such conditions as may for the time being be specified in the licence (which may include on release conditions as to supervision by a probation officer).

(3) The Department of Justice shall not, except in accordance with recommendations of the Parole Commissioners for Northern Ireland—  
(a) include a condition in a licence on release,  
(b) subsequently insert a condition in a licence, or  
(c) vary or cancel any condition in a licence.

#### **Recall of licensees**

46B.—(1) In this Article—

“*P*” means a person who has been released on licence under Article 46; “the Commissioners” and “the Department” have the meanings given in Article 46(1).

(2) The Department may revoke *P*'s licence and recall *P* to detention—  
(a) if recommended to do so by the Commissioners, or  
(b) without such a recommendation, if it appears to the Department that it is expedient in the public interest to recall *P* before such a recommendation is practicable.

(3) *P*—

(a) shall, on *P*'s return to detention, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and (b) may make representations in writing to the Department with respect to the recall.

(4) The Department shall refer *P*'s case to the Commissioners.

(5) Where on a reference under paragraph (4) the Commissioners direct *P*'s immediate release on licence under Article 46, the Department shall give effect to the direction.

(6) The Commissioners shall not give a direction under paragraph (5) unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that *P* should be confined.



(7) *On the revocation of P's licence, P shall be liable to be detained in pursuance of P's sentence and, if at large, shall be treated as being unlawfully at large.*"

(5) *In Article 46(3) of the Criminal Justice (Northern Ireland) Order 2008 Functions of Parole Commissioners for Northern Ireland) at the end add "or Articles 46 to 46B of the Criminal Justice (Children) (Northern Ireland) Order 2008."*

(6) *Where—*

(a) *on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order; and*

(b) *the Department, after consultation with the Lord Chief Justice and the trial judge if available, certifies its opinion that, if the amendments made by this section had been in operation at the time when that person was sentenced, the court by which that person was sentenced would have specified as the relevant part of the sentence such part as is specified in the certificate, Article 46 of the 1998 Order (as substituted) shall apply as if the relevant part of that person's sentence for the purposes of that Article were the part specified in the certificate.*

(7) *But subsection (6) does not apply (and subsection (8) applies instead) where that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.*

(8) *Where this subsection applies, paragraphs (3) to (6) of Article 46B of the 1998 Order have effect as if that person had been recalled to prison under paragraph (2) of that Article on commencement.*

(9) *Articles 46A and 46B of the 1998 Order apply to an existing licensee as they apply to a person who is released on licence under Article 46 of that Order as substituted).*

(10) *In this section—*

*"commencement" means the date on which this section comes into operation; "existing licensee" means a person who, before commencement, has been discharged on licence under Article 46 of the 1998 Order and whose licence is in force on commencement; "the 1998 Order" means the Criminal Justice (Children) (Northern Ireland) Order 1998.'*

515. Agreed: the Committee is content with the new clause proposed by the Department.

**Clause 8 – Repeals**

516. Agreed: the Committee is content with clause 8 as drafted.

**Clause 9 – Commencement and transitional, etc. provisions**

517. Agreed: the Committee is content with clause 9 subject to the amendments proposed by the Department as a consequence of the proposed new provisions in relation to the Registered Intermediaries Scheme and the licence arrangements relating to the release of young offenders convicted of certain serious crimes as follows:

Clause 9, page 8, line 2, after 'sections 2' insert ', (Examination of accused through intermediary)'

Clause 9, page 8, line 2

After 'sections 2' insert ', (Release on licence of child convicted of serious offence)'

**Clause 10 – Short title**

518. Agreed: the Committee is content with clause 10 as drafted.

**Schedule 1 – Schedule 3A to the Sexual Offences Act 2003, as inserted**

519. Agreed: The Committee is content with Schedule 1 as drafted.

**Schedule 2 – Articles 63b to 630 of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted**

520. Agreed: The Committee is content with Schedule 2 subject to the amendments proposed by the Department to clarify Article 63C by linking retention to the perceived utility of the material rather than to the conclusion of the investigation; to set out the prescribed circumstances on the face of the Bill; and to insert a new provision permitting limited retention in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011 as follows:

**Schedule 2, page 15, line 14**

Leave out from ‘the conclusion’ to end of line 17 and insert ‘the Chief Constable determines that the material is of no evidential value in relation to—

- (a) the investigation of the offence; or
- (b) proceedings against any person for the offence.’

**Schedule 2, page 15, line 41**

Leave out from beginning to end of line 3 on page 16 and insert ‘and

(c) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under Article 63DA to the retention of the material.’

**Schedule 2, page 16, line 37**

Leave out paragraph (13)

**Schedule 2, page 17,**

Leave out lines 12 and 13 and insert—

**‘Retention of Article 63B material by virtue of Article 63D(5): consent of Commissioner**

63DA.—(1) The Chief Constable may apply under paragraph (2) or (3) to the Commissioner appointed under Article 63D(1 1) for consent to the retention of Article 63B material which falls within Article 63D(5)(a) and (b).

(2) The Chief Constable may make an application under this paragraph if the Chief Constable considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—

- (a) under the age of 18,
- (b) a vulnerable adult, or
- (c) associated with the person to whom the material relates.

(3) The Chief Constable may make an application under this paragraph if the Chief Constable considers that—

- (a) the material is not material to which paragraph (2) relates, but
- (b) the retention of the material is necessary in the interests of public protection.

(4) The Department of Justice may by order amend paragraph (2) or (3).

(5) The Commissioner may, on an application under this Article, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.

(6) But where notice is given under paragraph (7) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

(7) The Chief Constable must give to the person to whom the material relates notice of—

- (a) an application under this Article, and
- (b) the right to make representations.

(8) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents), a notice under paragraph (7) may, in particular, be given to a person by sending it to the person by email or other electronic means.

(9) The requirement in paragraph (7) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the Chief Constable.

(10) An application or notice under this Article must be in writing.

(11) In this Article—

“victim” includes intended victim,

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise, and the reference in paragraph (2)(c) to a person being associated with another person is to be read in accordance with Article 3(3) to (6) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.’

**Schedule 2, page 19, line 14, at end insert—**

**‘Retention of Article 63B material: persons given a penalty notice**

63HA.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) Act 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken.

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.’

**Schedule 3 – Amendments: fingerprints, DNA profiles, etc.**

521. Agreed: the Committee is content with Schedule 3 subject to the amendments proposed by the Department to bring completion of a diversionary youth conference within the retention framework on the same basis as a caution and to correct a drafting error as follows:

**Schedule 3, page 23, line 33**

At end insert—

‘and, if Article 63K applies in relation to that person, that person shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.

(1A) Where—

(a) a discretionary youth conference under Part 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to a child and an offence; and

(b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, determines not to institute proceedings against the child in respect of the offence or, as the case may be, not to continue proceedings already instituted against the child in respect of the offence, his Part applies, in relation to the child and the offence, as if the child had been convicted of the offence and, if Article 63H applies in relation to the child, the child shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.’

**Schedule 3, page 24, line 6**

Leave out from beginning to “1 8(8)(b)” in line 9 and insert—

'5. In Article 89 (orders and regulations) after paragraph (2) insert—  
“(2A) An order under Article 63DA(4) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

The Counter-Terrorism Act 2008 (c. 28)

6. In section 1 8(8)(c)'

#### **Schedule 4 – Repeals**

522. Agreed: the Committee is content with Schedule 4 subject to the amendment proposed by the Department as a consequence of the proposed amendment to Clause 3 as follows:

**Schedule 4**, page 24, line 17,  
At end insert—

‘PART 1  
SEX OFFENDERS

<i>Short Title</i>	<i>Extent of repeal</i>
<i>The Sexual Offences Act 2003 (c. 42).</i>	<i>Sections 97 to 101. In section 136(8) “101”.</i>

#### **Long Title**

523. Agreed: The Committee is content with the Long Title subject to the amendments proposed by the Department as a consequence of the proposals for new provisions in relation to the Registered Intermediaries Scheme and the licence arrangements relating to the release of young offenders convicted of certain serious crimes as follows:

*Long title*

*At end insert ‘and to provide for the release on licence of persons detained under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998’*

*Leave out ‘and to’ and insert ‘to’*

*At end insert ‘; and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999.’*

#### **New Clause**

524. The Committee agreed to introduce a new clause to abolish the offence of scandalising the court in Northern Ireland as follows:

#### **New Clause**

*Clause 7, page 7, line 35*  
*At end insert –*

#### **‘Abolition of the offence of scandalising the court**

*7A. The common law offence of scandalising the court is abolished.’*



Northern Ireland  
Assembly

Appendix 1

# Minutes of Proceedings



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# Thursday 28 June 2012

## Room 29, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Sydney Anderson MLA  
Mr Stewart Dickson MLA  
Mr Tom Elliott MLA  
Mr Seán Lynch MLA  
Mr Alban Maginness MLA  
Mr Patsy McGlone MLA  
Mr Peter Weir MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Ms Roisin Donnelly (Assistant Assembly Clerk)  
Mr Joe Westland (Clerical Supervisor)  
Mr Kevin Marks (Clerical Officer)

**2.05 p.m.** The meeting commenced in public session.

### **5. Criminal Justice Bill: Principles**

**3.04 p.m.** David Hughes, Head of Policing Policy and Strategy Division, Amanda Patterson, Criminal Policy Branch, Debbie Pritchard, Human Trafficking Branch and Ian Kerr, Police Powers and Custody Branch, Department of Justice joined the meeting.

The officials briefly outlined the principles of the recently introduced Criminal Justice Bill and in what areas policy had changed since the Committee was briefed on the final policy proposals.

A detailed question and answer session followed covering issues including: the Sexual Offences Register and the appeals process; the current position in England and Wales regarding changing the sex offender notification requirements; the new human trafficking clauses; the scale and content of the DNA database; the application process to have DNA profile information removed from the database; the retention of photographs; the extent to which the legislation complies with or exceeds the requirements of the EU Directive; and whether the DNA/fingerprint provisions go further than the EU Court Ruling requires.

The evidence session was recorded by Hansard.

The Chairman thanked the officials for the briefing and they left the meeting.

**Mr Paul Givan MLA**  
Chairman, Committee for Justice  
5 July 2012

**[EXTRACT]**

## Thursday 5 July 2012

### Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Sydney Anderson MLA  
Mr Stewart Dickson MLA  
Mr Tom Elliott MLA  
Mr Seán Lynch MLA  
Mr Patsy McGlone MLA  
Mr Peter Weir MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darrah (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mr Joe Westland (Clerical Supervisor)  
Mr Kevin Marks (Clerical Officer)

**Apologies:** Mr Alban Maginness

**2.05 p.m.** The meeting commenced in public session.

### 3. **Matters Arising**

i The Committee considered proposals for the handling of the Committee Stage of the Criminal Justice Bill, including a Bill timetable, a draft media sign-posting notice, a draft letter seeking written evidence on the Bill and a list of key stakeholders.

*Agreed:* The Committee agreed that the consultation period for the Bill should last a period of 7 to 8 weeks.

*Agreed:* The Committee noted the Bill timetable and agreed the draft media sign-posting notice, a draft letter seeking written evidence on the Bill and the list of key stakeholders.

**Mr Paul Givan MLA**  
Chairman, Committee for Justice  
13 September 2012

**[EXTRACT]**



# Thursday 13 September 2012

## Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
 Mr Raymond McCartney MLA (Deputy Chairman)  
 Mr Sydney Anderson MLA  
 Mr Stewart Dickson MLA  
 Mr Tom Elliott MLA  
 Mr Seán Lynch MLA  
 Mr Alban Maginness MLA  
 Ms Rosaleen McCorley MLA  
 Mr Patsy McGlone MLA  
 Mr Peter Weir MLA  
 Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
 Ms Marie Austin (Assistant Assembly Clerk)  
 Mr Kevin Marks (Clerical Supervisor)

**Apologies:** None

**2.03 p.m.** The meeting commenced in public session.

### 7. **Proposals for Committee Stages of the Criminal Justice Bill**

The Committee noted that 26 responses had been received to its request for written evidence on the Criminal Justice Bill.

*Agreed:* The Committee agreed to invite the Assembly Researcher to the meeting scheduled for 20 September to outline the key points in the research paper on the EU Directive on Human Trafficking and to answer Members' questions prior to the briefing by the OCTF Immigration and Human Trafficking sub-group.

*Agreed:* The Committee agreed to seek advice on whether the miscellaneous provision on statutory prohibitions on holding firearms proposed by Mr Ian McCrea MLA falls within the scope of the Bill.

*Agreed:* The Committee agreed to write to the Department to seek information on the likely impact on legal aid of the proposals in the Bill.

*Agreed:* The Committee agreed the oral evidence sessions for the Bill and to seek information/clarification from the Department on a range of related issues. The Committee also agreed to forward a copy of the written submissions to the Department.

The Committee considered a motion to extend the Committee Stage of the Justice Bill.

Question put and agreed:

That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 14 December 2012, in relation to the Committee Stage of the Criminal Justice Bill (NIA Bill 10/11-15).

#### **Mr Paul Givan MLA**

Chairman, Committee for Justice  
 20 September 2012

**[EXTRACT]**

## Thursday 20 September 2012

### Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Sydney Anderson MLA  
Mr Stewart Dickson MLA  
Mr Tom Elliott MLA  
Mr Seán Lynch MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darrah (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mr Kevin Marks (Clerical Supervisor)  
Ms Heather Graham (Clerical Officer)

**Apologies:** Mr Patsy McGlone MLA

**2.05 p.m.** The meeting commenced in public session.

#### **4. Briefing by Assembly Researcher: EU Directive on Human Trafficking**

**2.07 p.m.** Jim Wells and Tom Elliott joined the meeting.

**2.08 p.m.** Raymond McCartney joined the meeting.

**2.12 p.m.** Alban Maginness joined the meeting.

**2.07 p.m.** Fiona O'Connell, Assembly Researcher, joined the meeting.

Ms O'Connell outlined the key points in her research paper on the issues raised by respondents to the Department's legislative proposals on human trafficking in order to comply with the EU Directive and answer Members' questions. Ms O'Connell agreed to provide the Committee with further information on the level of prostitution in those countries where stringent legislation is in place and the associated impacts.

The Chairman thanked Ms O'Connell for the briefing and she left the meeting.

#### **5. Criminal Justice Bill: Human Trafficking Clauses**

**2.19p.m.** Simon Rogers, Deputy Director, Protection & Organised Crime Division, DOJ; Debbie Pritchard, Head of Human Trafficking Branch, DOJ; and Ian Kerr, Criminal Justice Bill Manager, DOJ joined the meeting.

The officials outlined the nature and purpose of clauses 5 and 6 of the Criminal Justice Bill which relate to trafficking people for exploitation.

A detailed question and answer session followed covering issues including: the reasons why the proposed sentence in the Bill under summary conviction for the new offences was lower than that proposed in the consultation document; whether it was possible for a person convicted of the new offences to receive only a fine; the reasons why the Department has not introduced a minimum custodial sentence for the new offences; the merits or otherwise of introducing a single piece of legislation or a legislative guide; legal redress for unduly lenient sentences; the circumstances which would determine whether a case is taken to the Magistrates' or Crown Court; the areas of the Bill that go beyond that which is required under

the EU Directive; the progress of legislation in the Republic of Ireland to implement the EU Directive; and trafficking outside the UK for sexual exploitation.

*Agreed:* The Committee agreed to refer any outstanding issues in relation to clauses 5 and 6 to the Department for a written response.

The briefing was recorded by Hansard.

The Chairman thanked Mr Rogers, Ms Pritchard and Mr Kerr for the briefing. Ms Pritchard and Mr Kerr left the meeting.

**6. Criminal Justice Bill: Organised Crime Task Force Immigration and Human Trafficking Sub-Group**

**2.56p.m.** Simon Rogers, Deputy Director, Protection & Organised Crime Division, DOJ was joined by Detective Superintendent Phil Marshall, PSNI, Chair of the Immigration and Human Trafficking Subgroup; Mike Golden, UK Border Agency; and Dawn Harmon, Community Safety Unit, DOJ

The officials outlined the position of the Organised Crime Task Force Immigration and Human Trafficking Sub-Group on issues raised in relation to human trafficking as part of the Department's consultation on the proposed legislative amendments and additional work being taken forward.

A detailed question and answer session followed covering issues including: how effective the PSNI is in arresting and convicting traffickers; the support services that are available to victims of trafficking; the range of actions that are taken at borders and points of entry including national profiling; joint working with the Republic of Ireland; and access to legal aid for victims of trafficking.

The briefing was recorded by Hansard.

The Chairman thanked Mr Rogers, Detective Superintendent Marshall, Mr Golden and Ms Harmon for the briefing and they left the meeting.

**8. Criminal Justice Bill: Delegated Powers**

The Committee considered a report by the Examiner of Statutory Rules on the Department's Memorandum on Delegated Powers contained in the Criminal Justice Bill, and the issues he raised in relation to new Article 63D(5)(c) and (13) of PACE as inserted by Schedule 2.

*Agreed:* The Committee agreed to request a briefing from the Department on the reasons for the proposed use of delegated legislation in relation to Article 63D(5)(c) and the issues highlighted by the Examiner of Statutory Rules.

**Mr Paul Givan MLA**

Chairman, Committee for Justice  
27 September 2012

**[EXTRACT]**

## Thursday 27 September 2012

### Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Sydney Anderson MLA  
Mr Stewart Dickson MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Patsy McGlone MLA  
Mr Peter Weir MLA  
Mr Jim Wells MLA

**In Attendance:** Mr Paul Carlisle (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mr Kevin Marks (Clerical Supervisor)  
Ms Andrienne Magee (Clerical Officer)

**Apologies:** Mr Tom Elliott MLA

**2.03 p.m.** The meeting commenced in public session.

### 3. **Matters Arising**

- ii The Chairperson informed Members that Bill folders had been updated with the Public Prosecution Service consultation document entitled 'Prosecuting Cases of Human Trafficking' and the PSNI written submission.

### 4. **Criminal Justice Bill: Sex Offender Notification and DNA/Fingerprint Retention Clauses**

**2.05 p.m.** Gareth Johnston, Deputy Director of Criminal Justice Policy and Legislation Division, DOJ; and Amanda Patterson, Criminal Justice Policy and Legislation Division, DOJ joined the meeting.

**2.05 p.m.** Raymond McCartney joined the meeting.

**2.06 p.m.** Alban Maginness joined the meeting.

The officials outlined the nature and purpose of the clauses of the Criminal Justice Bill relating to sex offender notification and other changes to the Sexual Offences Act 2003.

A detailed question and answer session followed covering issues including: the main differences in the proposed legislation compared to existing legislation; the variations between the proposed legislation in Northern Ireland and other UK jurisdictions; the criteria the Chief Constable has to take into account when assessing an application for review, and how this compares to other UK jurisdictions; the time limits attached to reviews; the appeals process; and measures to ensure that sex offenders that arrive in Northern Ireland from other countries are made subject to notification requirements.

**Agreed:** The Committee agreed that, in relation to the sex offender notification clauses, the Department should provide it with a paper on the main differences between the Criminal Justice Bill and the clause proposed for the previous Justice Bill and an analysis of the proposed legislation compared to other UK jurisdictions.

The briefing was recorded by Hansard.

The Chairman thanked Mr Johnston and Ms Patterson for the briefing and they left the meeting.

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**2.35p.m.** David Hughes, Deputy Director of Policing Policy and Strategy Division, DOJ; Ian Kerr, Police Powers and Custody Branch, DOJ; and Gary Dodds, Police Powers and Custody Branch, DOJ joined the meeting

The officials outlined the nature and purpose of the clauses and schedules of the Criminal Justice Bill relating to DNA/fingerprint retention and addressed the issues highlighted by the Examiner of Statutory Rules in relation to the delegated powers inserted by Schedule 2 of the Bill.

A detailed question and answer session followed covering issues including: whether a Biometric Commissioner would be appointed or whether the courts would assume that role; the point at which the investigation of an offence concludes; the extent to which the Bill is compatible with the presumption of innocence; and the existing material that will be destroyed under the proposed new framework.

The briefing was recorded by Hansard.

The Chairman thanked Mr Hughes, Mr Kerr and Mr Dodds for the briefing and they left the meeting.

*Agreed:* The Committee agreed that, in relation to DNA/fingerprint retention, the Department should provide it with a paper on the main differences between the system proposed for Northern Ireland and the systems operated in other UK jurisdictions.

*Agreed:* The Committee agreed to refer any issues raised by respondents in relation to the clauses that were not covered during the briefing sessions to the Department for a written response.

**Mr Paul Givan MLA**

Chairman, Committee for Justice

4 October 2012

**[EXTRACT]**

# Thursday 4 October 2012

## Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Alex Easton MLA  
Mr Sean Lynch MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Patsy McGlone MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
Mrs Roisin Donnelly (Assistant Assembly Clerk)  
Mr Kevin Marks (Clerical Supervisor)

**Apologies:** Mr Stewart Dickson MLA  
Mr Tom Elliott MLA  
Mr William Humphrey MLA

**2.01 p.m.** The meeting commenced in public session.

### 3. **Matters Arising**

The Committee noted a supplementary research briefing paper on issues relating to human trafficking.

### 4. **Criminal Justice Bill: Oral evidence on the Clause and Schedules relating to the Retention of DNA/Fingerprints**

#### **Evidence Session with the Children's Law Centre**

**2.04 p.m.** Paddy Kelly, Director and John Patrick Clayton, Assistant Policy Officer, Children's Law Centre joined the meeting.

**2.04 p.m.** Patsy McGlone joined the meeting.

Ms Kelly and Mr Clayton outlined the key issues in the Children's Law Centre's submission on the clause and schedules of the Criminal Justice Bill relating to the Retention of DNA/ Fingerprints.

A detailed question and answer session followed covering issues including: whether cautions should be included as a recordable offence for the purposes of this legislation; the minimum age of criminal responsibility; examples of the outworkings of the proposed legislation in relation to the retention of children and young people's fingerprints and DNA material; the evidence that suggested retention would be detrimental to children; whether the provisions of the Bill adequately address the European Court of Human Rights S & Marper judgement; lack of clarity regarding 'prescribed circumstances'; the disconnect between this legislation and the diversionary approach being implemented by other parts of the Criminal Justice System; the definition of recordable offences; whether the provisions in the Bill are proportionate, whether the provisions undermine the 'presumption of innocence'; and whether the Bill should contain specific provisions relating to children and young people who had committed minor offences.

**2.31 p.m.** Jim Wells joined the meeting.

The Chairman thanked Ms Kelly and Mr Clayton for the briefing and they left the meeting.

The briefing was recorded by Hansard.

### **Evidence Session with the Northern Ireland Human Rights Commission**

**2.51 p.m.** Chief Commissioner Michael O’Flaherty and Colin Caughey, Policy Worker, Northern Ireland Human Rights Commission joined the meeting.

Mr O’Flaherty and Mr Caughey, outlined the key issues in the Northern Ireland Human Rights Commission’s submission on the clause and schedules of the Criminal Justice Bill relating to the Retention of DNA/Fingerprints in relation to adults.

A detailed question and answer session followed covering issues including: the circumstances in which the indefinite retention of material is appropriate; the need for an opportunity to challenge and appeal retention; whether retention of material from all convicted persons is proportionate given the wide range of offences to which it can be applied; the need for the ‘prescribed circumstances’ to be set out on the face of the Bill and for them to comply with human rights standards; evidence recently given by the UK Government to the Council of Ministers; whether the provisions in the Bill adequately address international human rights standards and whether the provisions as they are currently drafted would be vulnerable to future legal challenge.

The Chief Commissioner agreed to provide the Committee with a copy of the evidence to the Council of Ministers.

The Chairman thanked Mr O’Flaherty and Mr Caughey for the briefing and they left the meeting.

The briefing was recorded by Hansard.

### **Evidence session with the Northern Ireland Commissioner for Children and Young People**

**3.21 p.m.** The Northern Ireland Commissioner for Children and Young People, Patricia Lewsley and Colette McIlvanna, Senior Legal and Casework Officer of NICCY joined the meeting.

Ms Lewsley and Ms McIlvanna outlined the key issues in NICCY’s submission on the clause and schedules of the Criminal Justice Bill relating to the Retention of DNA/Fingerprints.

A detailed question and answer session followed covering issues including: the minimum age of criminal responsibility; the capacity of children as young as ten to consent to provide fingerprints and DNA samples; concerns that few of the issues raised by the Commissioner in response to the Department’s consultation had been addressed; whether the use of cautions in the legislation was appropriate; the Commissioner’s view on the retention of material from non-convicted children; and the circumstances in which retention is appropriate.

The Chairman thanked Ms Lewsley and Ms McIlvanna for the briefing.

The briefing was recorded by Hansard.

*Agreed:* The Committee agreed to refer the issues raised in both the oral and written evidence received in relation to the Retention of DNA/Fingerprints to the Department of Justice for a written response and to request a list of all recordable offences.

### **Mr Paul Givan MLA**

Chairman, Committee for Justice  
11 October 2012

**[EXTRACT]**

# Thursday 11 October 2012

## Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Stewart Dickson MLA  
Mr Alex Easton MLA  
Mr Tom Elliott MLA  
Mr William Humphrey MLA  
Mr Seán Lynch MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Patsy McGlone MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darrah (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mr Kevin Marks (Clerical Supervisor)  
Ms Rachel McBride (Clerical Officer)

**Apologies:** None.

*Agreed:* The Committee agreed to commence the meeting in closed session.

**2.02 p.m.** The meeting commenced in closed session.

### **1. Briefing by the Assembly Bill Clerk on the scope of the Criminal Justice Bill**

**2.02 p.m.** Eilís Haughey, Assembly Bill Clerk, joined the meeting. Ms Haughey briefed the Committee on the scope of the Criminal Justice Bill and answered Members' questions.

The Chairman thanked Ms Haughey for the briefing and she left the meeting.

*Agreed:* The Committee agreed to refer a copy of Mr McCrea MLA's letter regarding a miscellaneous provision for inclusion in the Criminal Justice Bill to the Department of Justice for a response on the proposal.

### **2. Legal Advice on the Criminal Justice Bill**

**2.10pm** Tara McCaul, Assembly Senior Legal Advisor, joined the meeting. Ms McCaul briefed the Committee on her updated legal advice in respect of the Criminal Justice Bill.

The Chairman thanked Ms McCaul for the briefing and she left the meeting.

**2.22 p.m.** The meeting moved to public session.

### **5. Matters Arising**

Members noted a copy of the evidence submitted by the UK Government in the case of S and Marper which the Human Rights Commission had provided to assist consideration of the Fingerprint and DNA retention clauses and schedules of the Criminal Justice Bill.

### **6. Criminal Justice Bill: Oral evidence sessions on trafficking people for exploitation**

#### **Evidence session with CARE in Northern Ireland**

Members noted that the Department of Justice had provided a copy of its response to Lord Morrow's consultation on his draft Private Members' Bill on human trafficking and CARE had provided a supplementary paper on the human trafficking offences for the oral briefing.



**2.23 p.m.** Dr Dan Boucher, Director of Parliamentary Affairs and Mark Baillie, Public Affairs Officer, CARE in Northern Ireland joined the meeting.

The representatives outlined the key issues in CARE in Northern Ireland's submission on the clauses and schedule of the Bill relating to human trafficking and the EU Directive.

A detailed question and answer session followed covering issues including: the extent to which the Bill meets the obligations of the EU Directive; the complexity of the legislation; the need for an independent national rapporteur; the need to reduce demand for sexual services; the definitions that have been omitted from the Bill and the reasons why they should be included; and, the merits of the provisions in Lord Morrow's Private Members' Bill on human trafficking.

The Chairman thanked Dr Boucher and Mr Baillie for the briefing and they left the meeting.

The briefing was recorded by Hansard.

### **Evidence session with the Northern Ireland Council for Ethnic Minorities**

**2.56 p.m.** Helena Macormac, Strategic Advocacy Project Manager and Karen McLaughlin, Legal Policy Officer, Northern Ireland Council for Ethnic Minorities joined the meeting.

The representatives outlined the key issues in the Northern Ireland Council for Ethnic Minorities' submission on the clauses and schedule of the Bill relating to human trafficking.

A detailed question and answer session followed covering issues including: the importance of taking a human rights-based approach to human trafficking legislation; whether there is consensus on the criminalisation of paying for sexual services; the definitions that have been omitted from the Bill and the reasons why they should be included; the dangers of a piecemeal approach to human trafficking legislation; and, the extent to which the Bill meets the obligations of the EU Directive.

The Chairman thanked Ms Macormac and Ms McLaughlin for the briefing and they left the meeting.

The briefing was recorded by Hansard.

**3.12 p.m.** Mr Wells left the meeting.

*Agreed:* The Committee agreed to refer the issues raised in both the oral and written evidence received in relation to trafficking people for exploitation to the Department of Justice for a written response.

## **7. Criminal Justice Bill – Issues for consideration**

The Chairperson reminded Members that NIACRO had been unavailable to attend the Committee meeting on 4 October to give evidence on the retention of Fingerprints, DNA profiles etc. clauses and schedule of the Criminal Justice Bill.

*Agreed:* The Committee agreed to refer the Hansards of the previous oral evidence sessions on the retention of Fingerprints/DNA to NIACRO for consideration of whether all the relevant issues had been fully covered by previous witnesses. If not, arrangements would be made for NIACRO to attend the meeting on 18 October.

The Committee considered a proposal by the Department of Justice to bring forward an amendment to the Criminal Justice Bill to make additional legislative provision in relation to the Registered Intermediaries Scheme.

*Agreed:* The Committee agreed to request the wording of the proposed amendment by mid-November to allow full consideration to be given to the matter before the conclusion of the Committee Stage of the Bill.

Members considered a response from the Department of Justice to the Committee's request for information on the proposals contained in the Criminal Justice Bill which might have an impact on the Legal Aid Fund.

*Agreed:* The Committee agreed to refer the Department's response to the Legal Services Commission for comment.

*Agreed:* The Committee agreed to move agenda item 8 to the end of the meeting.

**9. Human Trafficking: Summary of consultation responses and proposed way forward on the provisions in the Criminal Justice Bill and engagement with NGOs**

Members considered a summary of responses to the Department's two part consultation on human trafficking. The first part of the consultation covered the legislative amendments required to allow Northern Ireland to comply with the criminal aspects of the EU Directive and the second part invited views on how the Department of Justice engages with non-governmental organisations and others in relation to human trafficking.

Members noted the Department's intention to give further consideration to the issue raised by the Committee regarding increasing the sentence for a summary conviction from 6 months imprisonment to 12 months imprisonment for human trafficking offences only and that it would respond to the wider issues raised by respondents in relation to the EU Directive in due course.

Members also noted an invitation from the Department of Justice to the Tackling Trafficking Together event on 18 October.

**Mr Paul Givan MLA**

Chairman, Committee for Justice

18 October 2012

**[EXTRACT]**

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## Thursday 18 October 2012

### Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Alex Easton MLA  
Mr Tom Elliott MLA  
Mr William Humphrey MLA  
Mr Sean Lynch MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Patsy McGlone MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mr Kevin Marks (Clerical Officer)  
Ms Rachel McBride (Clerical Officer)

**Apologies:** Mr Stewart Dickson MLA

*Agreed:* The Committee agreed to commence the meeting in closed session.

**2.03 p.m.** The meeting commenced in closed session.

**2.34 p.m.** The meeting moved to public session.

#### 5. **Matters Arising**

- ii Members noted that NIACRO had confirmed that all the relevant issues in relation to the DNA/Fingerprint retention clauses in the Criminal Justice Bill had been fully covered by previous witnesses and it had nothing further to add except its support for those positions already outlined therefore an oral evidence session was not required.

#### 6. **Criminal Justice Bill: Oral evidence session on the Criminal Justice Bill**

**2.50 p.m.** Assistant Chief Constable George Hamilton, Chief Superintendent Mark Hamilton, and Chief Superintendent Ivan Farr, Head of Scientific Support, PSNI, joined the meeting.

The representatives outlined the key issues in the Police Service of Northern Ireland's submission on the clauses and schedules in the Criminal Justice Bill.

A detailed question and answer session followed covering issues including: who initiates the process to end notification requirements for sex offenders for acts that are no longer offences; how a failure to notify the police after 3 days once a sex offender has stayed for a qualifying period would be identified and enforced; the PSNI's views on the non-prosecution of victims of human trafficking; whether provision for the protection of victims of human trafficking during the pre-trial and court proceedings should be included in the legislation; whether the inclusion of a minimum custodial sentence for human trafficking offences in the legislation would act as an effective deterrent; whether the changes to the rules governing DNA retention would hamper the PSNI in its work; whether the retention of DNA in respect of young people has resulted in stigmatisation or trauma for those concerned; the retention of DNA for less serious crimes and the use of discretion by the PSNI; and, the safeguards that are in place in relation to the retention of DNA.

**3.27 p.m.** William Humphrey left the meeting.

The Chairman thanked the officers for the briefing and they left the meeting.

The briefing was recorded by Hansard.

**Mr Paul Givan MLA**

Chairman, Committee for Justice

25 October 2012

**[EXTRACT]**

# Thursday 8 November 2012

## Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
 Mr Raymond McCartney MLA (Deputy Chairman)  
 Mr Stewart Dickson MLA  
 Mr Alex Easton MLA  
 Mr Tom Elliott MLA  
 Mr Sean Lynch MLA  
 Mr Alban Maginness MLA  
 Ms Rosaleen McCorley MLA  
 Mr Patsy McGlone MLA

**In Attendance:** Mrs Christine Darrah (Assembly Clerk)  
 Ms Marie Austin (Assistant Assembly Clerk)  
 Mr Kevin Marks (Clerical Officer)  
 Ms Rachel McBride (Clerical Officer)

**Apologies:** Mr William Humphrey MLA  
 Mr Jim Wells MLA

**2.04 p.m.** The meeting commenced in public session.

**2.09 p.m.** The meeting was suspended.

**2.26 p.m.** The meeting resumed in public session.

**2.26 p.m.** The Chairman left the meeting and the Deputy Chairman took the Chair.

### 7. **Clause by Clause Consideration – Criminal Justice Bill**

**3.05 p.m.** Gareth Johnston, Deputy Director, and Amanda Patterson, Criminal Justice Policy and Legislation Division, Department of Justice, joined the meeting.

The Committee commenced consideration of the evidence received in relation to clauses 1 to 4 and schedule 1 of the Criminal Justice Bill relating to sex offenders and sought clarification/further information on a range of issues from the departmental officials.

The officials outlined a proposal to bring forward an additional clause regarding the notification requirements for sex offenders who travel within the United Kingdom and a proposed amendment to clause 3 relating to offences committed in an EEA State other than the United Kingdom.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance. Ms Patterson remained at the table and Mr Johnston left the meeting.

**3.23 p.m.** Mr Patsy McGlone left the meeting.

**3.36 p.m.** Mr Tom Elliott joined the meeting.

**Agreed:** The Committee agreed to forward a copy of the Department's response in relation to an issue raised regarding the grounds which the Chief Constable must consider when determining an application to review an indefinite notification requirement to Disability Action for comment.

**Agreed:** The Committee agreed to give further consideration to the proposal to introduce an additional clause regarding the notification requirements for sex offenders

who travel within the United Kingdom when the Department provided the wording of the clause.

*Agreed:* The Committee agreed to give further consideration to the proposed amendment to clause 3 relating to offences committed in an EEA State other than the United Kingdom when the Department provided the wording of the amendment.

**3.41 p.m.** Simon Rogers, Deputy Director, and Debbie Pritchard, Protection and Organised Crime Division, Department of Justice, joined the meeting.

The Committee commenced consideration of the evidence received in relation to clauses 5 and 6 of the Criminal Justice Bill relating to human trafficking and sought clarification/further information on a range of issues from the departmental officials.

The officials indicated that consideration and consultation was taking place regarding the implications of making human trafficking offences triable on indictment only and further information would be provided to the Committee on this issue.

The officials agreed to provide further information on a number of issues.

*Agreed:* The Committee agreed that Members should indicate at the next meeting if there were particular issues relating to human trafficking that they wished to discuss further.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

**Mr Paul Givan MLA**  
Chairman, Committee for Justice  
15 November 2012

**[EXTRACT]**

# Thursday 15 November 2012

## Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
 Mr Raymond McCartney MLA (Deputy Chairman)  
 Mr Stewart Dickson MLA  
 Mr Alex Easton MLA  
 Mr Tom Elliott MLA  
 Mr William Humphrey MLA  
 Mr Seán Lynch MLA  
 Mr Alban Maginness MLA  
 Ms Rosaleen McCorley MLA  
 Mr Patsy McGlone MLA  
 Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
 Ms Marie Austin (Assistant Assembly Clerk)  
 Mr Kevin Marks (Clerical Officer)  
 Ms Rachel McBride (Clerical Officer)

**1.41 p.m.** The meeting commenced in public session.

The Committee agreed to bring forward agenda item 4.

### 3. **Deliberations on the clause and schedules of the Criminal Justice Bill relating to the retention of Fingerprints, DNA Profiles etc**

**1.45 p.m.** Ian Kerr and Gary Dodds, Police Powers and Custody Branch, Department of Justice, joined the meeting.

**1.44 p.m.** Jim Wells joined the meeting.

**1.45 p.m.** Seán Lynch joined the meeting.

**1.50 p.m.** Patsy McGlone joined the meeting.

**2.03 p.m.** Stewart Dickson joined the meeting.

**2.08 p.m.** Alban Maginness joined the meeting.

**2.10 p.m.** William Humphrey joined the meeting.

The Committee commenced consideration of the evidence received in relation to clause 7 and schedules 2 and 3 of the Criminal Justice Bill relating to the retention of fingerprints, DNA profiles etc. and sought clarification/further information on a range of issues and proposed amendments from the departmental officials. A number of Articles were identified as requiring further discussion.

*Agreed:* The Committee agreed to give further consideration to the proposed amendment to Article 63C, regarding the retention of material until the conclusion of an investigation or any associated proceedings, when the Department provided the wording of the amendment.

*Agreed:* The Committee agreed to give further consideration to the proposed amendment to Article 63D, which would place the prescribed circumstances on the face of the Bill, when the Department provided the wording of the amendment.

*Agreed:* The Committee agreed to give further consideration to a proposed amendment to introduce provision regarding limited retention in cases where a penalty notice

has been issued under section 60 of the Justice Act (Northern Ireland) 2011 when the Department provided the wording of the amendment.

*Agreed:* The Committee agreed to give further consideration to a proposed amendment to bring completion of a diversionary youth conference within the retention framework on the same basis as a caution when the Department provided the wording of the amendment.

The briefing was recorded by Hansard.

The Chairman thanked the officials for their attendance and they left the meeting.

**Mr Paul Givan MLA**

Chairman, Committee for Justice

22 November 2012

**[EXTRACT]**



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## Thursday 22 November 2012

### Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Stewart Dickson MLA  
Mr Alex Easton MLA  
Mr Tom Elliott MLA  
Mr William Humphrey MLA  
Mr Seán Lynch MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Patsy McGlone MLA  
Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mr Kevin Marks (Clerical Officer)  
Ms Rachel McBride (Clerical Officer)  
Ms Eilis Haughey (Bill Clerk)

**2.03 p.m.** The meeting commenced in public session.

#### **4. Further consideration of matters relating to the Criminal Justice Bill**

The Committee noted the current position in relation to the sex offender and human trafficking provisions of the Criminal Justice Bill and those areas identified for further consideration at a future meeting.

The Committee noted correspondence from the Department of Justice providing further information in relation to issues raised regarding human trafficking during consideration of the Criminal Justice Bill on 8 November 2012.

*Agreed:* The Committee agreed to consider the information at the next meeting at which the Bill will be discussed.

The Committee considered whether there were any other issues that had been raised in the evidence received on the human trafficking clauses that required further consideration.

*Agreed:* Noting that the issues raised, which did appear to have merit, were covered in a Private Members' Bill on human trafficking which would come to the Committee for scrutiny following introduction, the Committee agreed to consider them further in that context.

The Committee considered a response from the Department of Justice in relation to a proposal for a miscellaneous provision to vary the current tariffs on prohibition on holding firearms, to reflect the type and seriousness of the offence, that had been submitted to the Committee.

*Agreed:* The Committee agreed that it would consider the matter further as part of the consultation on proposals to vary the Firearms Licensing Fees and other miscellaneous amendments being undertaken by the Department of Justice.

The Committee considered the wording of a proposed departmental amendment to make additional legislative provision in relation to the Registered Intermediaries Scheme.

*Agreed:* The Committee agreed that it was content with the proposed departmental amendment.

The Committee was briefed by the Bill Clerk on its proposal to abolish the offence of scandalising the court and considered the wording of an amendment for inclusion in the Criminal Justice Bill.

*Agreed:* The Committee agreed that a copy of the consultation undertaken in England and Wales on this issue should be provided to Members.

*Agreed:* The Committee agreed to write to the Attorney General for Northern Ireland to seek his views on the proposal to abolish the offence.

**Mr Paul Givan MLA**

Chairman, Committee for Justice

29 November 2012

**[EXTRACT]**

# Tuesday 4 December 2012

## Room 29, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
 Mr Raymond McCartney MLA (Deputy Chairman)  
 Mr Stewart Dickson MLA  
 Mr Alex Easton MLA  
 Mr Tom Elliott MLA  
 Mr Alban Maginness MLA  
 Ms Rosaleen McCorley MLA

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
 Ms Marie Austin (Assistant Assembly Clerk)  
 Mr Kevin Marks (Clerical Officer)  
 Ms Rachel McBride (Clerical Officer)  
 Ms Eilís Haughey (Assembly Bill Clerk)  
 Ms Caoimhe McElduff (Assembly Bill Office)

**Apologies:** Mr Jim Wells MLA

*Agreed:* The Committee agreed to commence the meeting in closed session.

**3.05 p.m.** The meeting commenced in closed session.

### 1. **Update by the Assembly Bill Clerk on the Scope of the Criminal Justice Bill**

**3.05 p.m.** The Assembly Bill Clerk joined the meeting at and provided further advice to the Committee on the scope of the Criminal Justice Bill in relation to a proposed amendment to abolish the offence of scandalising the court and answered Members' questions.

The Chairman thanked the Assembly Bill Clerk for the briefing.

**3.08 p.m.** The meeting moved into public session.

### 3. **Committee Stage: Criminal Justice Bill – Issues for further consideration**

**3.23 p.m.** Mr Tom Elliott joined the meeting.

The Committee considered a range of outstanding issues in relation to the Criminal Justice Bill including: draft departmental amendments to clause 3; an additional sex offender notification provision; issues relating to a rapporteur; making human trafficking offences triable on indictment only; human trafficking provisions that should be considered in the context of Lord Morrow's Private Members' Bill; how cautions, penalty notices and diversionary youth conferences are treated in relation to retention of fingerprints, DNA etc, and issues relating to the presumption of innocence and the minimum age of responsibility and the retention framework.

The Committee discussed the wording of a proposed amendment for inclusion in the Criminal Justice Bill to abolish the offence of scandalising the court and issues relating to admissibility.

*Agreed:* The Committee agreed the wording of the amendment to abolish the offence of scandalising the court and to write to the Speaker seeking his views on its admissibility.

**3.49 p.m.** Mr Stewart Dickson joined the meeting.

The session was recorded by Hansard.

**Mr Paul Givan MLA**  
Chairman, Committee for Justice  
13 December 2012

**[EXTRACT]**

## Thursday 6 December 2012

### Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
 Mr Raymond McCartney MLA (Deputy Chairman)  
 Mr Alex Easton MLA  
 Mr Tom Elliott MLA  
 Mr William Humphrey MLA  
 Mr Seán Lynch MLA  
 Mr Alban Maginness MLA  
 Ms Rosaleen McCorley MLA  
 Mr Patsy McGlone MLA

**Apologies:** Mr Stewart Dickson MLA  
 Mr Jim Wells MLA

**In Attendance:** Mrs Christine Darrah (Assembly Clerk)  
 Ms Marie Austin (Assistant Assembly Clerk)  
 Mr Kevin Marks (Clerical Officer)  
 Ms Rachel McBride (Clerical Officer)  
 Ms Eilis Haughey (Bill Clerk)

**2.04 p.m.** The meeting commenced in public session.

#### **4. Committee Stage: Criminal Justice Bill – Formal clause by clause consideration**

The Chairman advised Members that the Department had written to the Committee in relation to proposed new clauses in relation to Detention Provisions for inclusion in the Criminal Justice Bill.

Tony Kavanagh, Department of Justice, joined the meeting and outlined the purpose of the new clauses which would amend the Criminal Justice (Children) (Northern Ireland) Order 1998 to rectify a possible incompatibility with the European Convention on Human Rights (ECHR) concerning licence arrangements relating to the release of young offenders convicted of certain serious crimes.

The Committee considered the wording of the proposed new clauses in relation to Detention Provisions.

*Agreed:* The Committee agreed that it was content with the proposed new clauses.

The Committee commenced its formal clause by clause consideration of the Criminal Justice Bill.

#### **Clause 1 – Review of indefinite offender notification requirements**

The Committee considered Clause 1 as drafted.

Question: "That the Committee is content with Clause 1 put and agreed to."

#### **Clause 2 – Ending notification requirements for acts which are no longer offences**

The Committee considered Clause 2 as drafted.

Question: "That the Committee is content with Clause 2 put and agreed to."

**Clause 3 – Offences committed in an EEA State other than the United Kingdom**

The Committee considered a proposed departmental amendment to address concerns raised by the Executive and the Attorney General in relation to offences committed in an EEA State other than the United Kingdom.

Agreed: The Committee was content with the following proposed departmental amendment:

*Clause 3, page 2, line 31*

*Leave out ‘an EEA State other than’ and insert ‘a country outside’*

*Clause 3, page 2, line 32*

*Leave out an EEA State other than’ and insert ‘a country outside’*

*Clause 3, page 2, line 35*

*Leave out ‘an EEA State other than’ and insert ‘a country outside’*

*Clause 3, page 3, line 14*

*Leave out ‘State’ and insert ‘country’*

*Clause 3, page 3, line 24*

*Leave out ‘to the modifications set out below’ and insert*

*(a) in all cases, to the modifications set out below; and*

*(b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 96B.’*

*Clause 3, page 4, line 18*

*Leave out ‘State’ and insert ‘country’*

*Clause 3, page 4, line 24*

*Leave out ‘an EEA State other than’ and insert ‘a country outside’*

*Clause 3, page 4, line 25 at end insert—*

*‘Offences committed in a country which is not a member of the Council of Europe  
96B.—(1) The further provisions referred to in section 96A(5)(b) are as follows.*

*(2) Where P is charged with an offence under section 97(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).*

*(3) P shall cease to be subject to the notification requirements of this Part by virtue of section 96A if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).*

*(4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied—*

*(a) that any investigation or proceedings leading to it was conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the United Kingdom; and*

*(b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 96A(2).*

*(5) In this section—*

*“the relevant conviction, finding or caution” means the conviction, finding or caution by reason of which P is subject, by virtue of section 96A, to the notification requirements of this Part;*

*“the relevant court” means—*

*(a) in a case to which subsection (2) applies, the court before which P is charged;*

*(b) in a case to which subsection (3) applies, the High Court.”’*

*Clause 3, page 4, line 26*

*Leave out from beginning to ‘section 97’ in line 29 and insert—*

*(3) Omit sections 97 to 101 (notification orders).*

*(4) Subsection (3) (and the related repeals in Part I of Schedule 4) do not affect the validity or effect of any order made under section 97 or IOU*

*Clause 3, page 4*

*Leave out line 33 and insert for "98" substitute "96A(6)."*

Question: "That the Committee is content with Clause 3 subject to the Department's proposed amendments put and agreed to."

#### **Clause 4 – Sexual offences prevention orders**

The Committee considered Clause 4 as drafted.

Question: "That the Committee is content with Clause 4 put and agreed to."

#### **Schedule 1 – Schedule 3A to the Sexual Offences Act 2003, as inserted**

The Committee considered Schedule 1 as drafted.

Question: "That the Committee is content with Schedule 1 put and agreed to."

#### **Proposed additional amendment from the Department in relation to sex offender notification**

The Committee considered the Departments's proposed additional clause to address a gap in current legislation concerning details and information to be provided to the PSNI by offenders who travel within the UK.

Question: "That the Committee is content with the new clause as proposed by the Department as follows:

*New Clause*

*After clause 1 insert—*

*'Notification requirements: absence from notified residence*

*.—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.*

*(2) After section 85 insert—*

*'Notification requirements: absence from notified residence*

*85A.—(1) This section applies to a relevant offender at any time if the last home address notified by him under section 83(1), 84(1) or 85(1) was an address in Northern Ireland such as is mentioned in section 83(7)(a) (sole or main residence).*

*(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days ("the relevant period"), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).*

*(3) The information is—*

*(a) the date on which the relevant offender will leave that home address;*

*(b) such details as the relevant offender holds about—*

*(i) his travel arrangements during the relevant period;*

*(ii) his accommodation arrangements during that period;*

*(iii) his date of return to that home address.*

*(4) In this section—*

*"travel arrangements" include, in particular, details of the means of transport to be used and the dates of travel, "accommodation arrangements" include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.*

(5) Where—

(a) a relevant offender has given a notification under subsection (2); and  
(b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete, the relevant offender must give a further notification under subsection (2).

(6) Where a relevant offender—

(a) has notified a date of return to his home address, but  
(b) returns to his home address on a date other than that notified, the relevant offender must notify, the date of his actual return to the police within 3 days of his actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 86.

(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

(a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 83(5)(g) notified to the police under section 83 or 85;

(b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 84(l)(c).

(9) This section applies in relation to any relevant period which begins on or after the day after the coming into operation of section (Notification requirements: absence from notified residence,) of the Criminal Justice Act (Northern Ireland) 2012.”.

(3) In section 87(1) and (4) (method of notification) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

(4) In section 91 (offences)—

(a) in subsection (1)(a) after 85(1)” insert”, 85A(2) or (6)”;

(b) in subsection (1)(b) for “or 85(1)” substitute”, 85(1) or 85A(2) or (6)”;

(c) in subsection (3) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

put and agreed to.”

#### **Clause 5 – Trafficking people for sexual exploitation**

The Committee considered Clause 5 as drafted.

Question: “That the Committee is content with Clause 5 put and agreed to.”

#### **Clause 6 - Trafficking people for other exploitation**

The Committee considered Clause 6 as drafted.

Question: “That the Committee is content with Clause 6 put and agreed to.”

#### **Schedule 2 – Articles 63B to 63O of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted**

##### **Proposed departmental amendment relating to Article 63C**

The Committee considered a proposed departmental amendment relating to Article 63C to clarify the provision by linking retention to the perceived utility of the material rather than to the conclusion of the investigation.

Question: “That the Committee is content with the proposed departmental amendment relating to Article 63C as follows:



**Schedule 2, page 15, line 14**

Leave out from ‘the conclusion’ to end of line 17 and insert ‘the Chief Constable determines that the material is of no evidential value in relation to—

- (a) the investigation of the offence; or
- (b) proceedings against any person for the offence.’

put and agreed to.”

**Proposed departmental amendments relating to Article 63D**

The Committee considered proposed departmental amendments relating to Article 63D which set out on the face of the Bill the prescribed circumstances.

Question: “That the Committee is content with the proposed departmental amendments relating to Article 63D as follows:

**Schedule 2, page 15, line 41**

Leave out from beginning to end of line 3 on page 16 and insert ‘and

- (c) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under Article 63DA to the retention of the material.’

**Schedule 2, page 16, line 37**

Leave out paragraph (13)

**Schedule 2, page 17,**

Leave out lines 12 and 13 and insert—

**‘Retention of Article 63B material by virtue of Article 63D(5): consent of Commissioner**

63DA.—(1) The Chief Constable may apply under paragraph (2) or (3) to the Commissioner appointed under Article 63D(1 1) for consent to the retention of Article 63B material which falls within Article 63D(5)(a) and (b).

(2) The Chief Constable may make an application under this paragraph if the Chief Constable considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—

- (a) under the age of 18,
- (b) a vulnerable adult, or
- (c) associated with the person to whom the material relates.

(3) The Chief Constable may make an application under this paragraph if the Chief Constable considers that—

- (a) the material is not material to which paragraph (2) relates, but
- (b) the retention of the material is necessary in the interests of public protection.

(4) The Department of Justice may by order amend paragraph (2) or (3).

(5) The Commissioner may, on an application under this Article, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.

(6) But where notice is given under paragraph (7) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

(7) The Chief Constable must give to the person to whom the material relates notice of—

- (a) an application under this Article, and
- (b) the right to make representations.

(8) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents), a notice under paragraph (7) may, in particular, be given to a person by sending it to the person by email or other electronic means.

(9) The requirement in paragraph (7) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the Chief Constable.

(10) An application or notice under this Article must be in writing.

(11) In this Article—

“victim” includes intended victim,

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise, and the reference in paragraph (2)(c) to a person being associated with another person is to be read in accordance with Article 3(3) to (6) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.’

The Committee divided: Ayes 4; Noes 0; Abstain 5

**AYES**

Mr Alex Easton  
Mr Tom Elliott  
Mr Paul Givan  
Mr William Humphrey

**ABSTAIN**

Mr Seán Lynch  
Mr Alban Maginness  
Mr Raymond McCartney  
Ms Rosaleen McCorley  
Mr Patsy McGlone

Agreed: That the Committee is content with the proposed departmental amendments relating to Article 63D.

**Proposed departmental amendment relating to an additional provision permitting limited retention in cases where a penalty notice has been issued**

The Committee considered a proposed departmental amendment relating to an additional provision permitting limited retention in cases where a penalty notice has been issued under Section 60 of the Justice Act (Northern Ireland) 2011.

Question: “That the Committee is content with the new provision as proposed by the Department as follows:

*Schedule 2, page 19, line 14, at end insert—*

**‘Retention of Article 63B material: persons given a penalty notice**

63HA.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) Act 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken.

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.’

The Committee divided: Ayes 4; Noes 0; Abstain 5

**AYES**

Mr Alex Easton  
Mr Tom Elliott  
Mr Paul Givan  
Mr William Humphrey

**ABSTAIN**

Mr Seán Lynch  
Mr Alban Maginness  
Mr Raymond McCartney  
Ms Rosaleen McCorley  
Mr Patsy McGlone

Agreed: That the Committee is content with the new provision as proposed by the Department.

**Schedule 2**

Question: "That the Committee is content with Schedule 2 subject to the proposed departmental amendments put and agreed to."

The Committee divided: Ayes 4; Noes 0; Abstain 5

**AYES**

Mr Alex Easton  
Mr Tom Elliott  
Mr Paul Givan  
Mr William Humphrey

**ABSTAIN**

Mr Seán Lynch  
Mr Alban Maginness  
Mr Raymond McCartney  
Ms Rosaleen McCorley  
Mr Patsy McGlone

Agreed: That the Committee is content with Schedule 2 subject to the proposed departmental amendments.

**Schedule 3 – Amendments: fingerprints, DNA profiles, etc****Proposed departmental amendment to bring the completion of a diversionary youth conference within the framework on the same basis as a caution**

The Committee considered a proposed departmental amendment to bring the completion of a diversionary youth conference within the framework on the same basis as a caution.

Question: "That the Committee is content with the new provision as proposed by the Department as follows:

**Schedule 3**, page 23, line 33

*At end insert—*

*'and, if Article 63K applies in relation to that person, that person shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.*

*(1A) Where—*

*(a) a discretionary youth conference under Part 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to a child and an offence; and*  
*(b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, determines not to institute proceedings against the child in respect of the offence or, as the case may be, not to continue proceedings already instituted against the child in respect of the offence, his Part applies, in relation to the child and the offence, as if the child had been convicted of the offence and, if Article 63H applies in relation to the child, the child shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.'*

The Committee divided: Ayes 4; Noes 0; Abstain 5

**AYES**

Mr Alex Easton  
Mr Tom Elliott  
Mr Paul Givan  
Mr William Humphrey

**ABSTAIN**

Mr Seán Lynch  
Mr Alban Maginness  
Mr Raymond McCartney  
Ms Rosaleen McCorley  
Mr Patsy McGlone

Agreed: That the Committee is content with the new provision as proposed by the Department.

**Proposed departmental amendment to correct a drafting error**

The Committee considered a proposed amendment by the Department to correct a drafting error in Schedule 3.

Question: “That the Committee is content with the amendment as proposed by the Department as follows:

*Schedule 3. page 24, line 6*

*Leave out from beginning to “1 8(8)(b)” in line 9 and insert—*

*‘5. In Article 89 (orders and regulations) after paragraph (2) insert—*

*“(2A) An order under Article 63DA(4) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.*

*The Counter-Terrorism Act 2008 (c. 28)*

*6. In section 1 8(8)(c)’*

Put and agreed to”

Question: “That the Committee is content with Schedule 3 subject to the proposed departmental amendments put and agreed to.”

The Committee divided: Ayes 4; Noes 0; Abstain 5

**AYES**

Mr Alex Easton  
Mr Tom Elliott  
Mr Paul Givan  
Mr William Humphrey

**ABSTAIN**

Mr Seán Lynch  
Mr Alban Maginness  
Mr Raymond McCartney  
Ms Rosaleen McCorley  
Mr Patsy McGlone

Agreed: That the Committee is content with Schedule 3 subject to the proposed departmental amendments.

**Clause 7 – Retention of fingerprints, DNA profiles, etc.**

The Committee considered Clause 7 as drafted.

Question: “That the Committee is content with Clause 7 put and agreed to.”

The Committee divided: Ayes 4; Noes 0; Abstain 5

**AYES**

Mr Alex Easton  
Mr Tom Elliott  
Mr Paul Givan  
Mr William Humphrey

**ABSTAIN**

Mr Seán Lynch  
Mr Alban Maginness  
Mr Raymond McCartney  
Ms Rosaleen McCorley  
Mr Patsy McGlone

Agreed: That the Committee is content with Clause 7 as drafted.

**Proposed additional amendment from the Department in relation to Detention Provisions**

Question: "That the Committee is content with the new clauses as proposed by the Department as follows:

*New Clause*

*After Clause 7 insert—*

*'Release on licence of child convicted of serious offence*

*.—(1) In Article 45(2) of the Criminal Justice (Northern Ireland) Order 1998 (child convicted of serious offence) for "notwithstanding any other provisions of this Order" substitute "subject to Articles 46 to 46B".*

*(2) In Article 45 of that Order after paragraph (2) insert—*

*"(2A) Where a court passes a sentence under paragraph (2). the court shall specify such part of the sentence as the court considers appropriate as the relevant part of the sentence for the purposes of Article 46 (release on licence)."*

*(3) For Article 46 of that Order substitute—*

***"Release on licence***

***46.—(1) In this Article—***

***(a) "P" means a person detained under Article 45(2);***

***(b) "the Commissioners" means the Parole Commissioners for Northern Ireland;***

***(c) "the Department" means the Department of Justice; and***

***(d) references to the relevant part of P's sentence are references to the part of P's sentence specified as such under Article 45(2A).***

*(2) As soon as—*

*(a) P has served the relevant part of P's sentence; and*

*(b) the Commissioners have directed P's release under this Article, the Department shall release P on licence.*

*(3) The Commissioners shall not give a direction under paragraph (2) with respect to P unless—*

*(a) the Department has referred P's case to the Commissioners; and*

*(b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.*

*(4) P may require the Department to refer P's case to the Commissioners at any time—*

*(a) after P has served the relevant part of P's sentence; and*

*(b) where there has been a previous reference of P's case to the Commissioners under paragraph (3) or Article 46B(4), after the end of the period of 12 months beginning with the disposal of that reference.*

*(5) In determining for the purpose of this Article whether P has served the relevant part of P's sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Department otherwise directs.*

*(6) The Department may at any time release P on licence if it is satisfied that exceptional circumstances exist which justify P's release on compassionate grounds.*

*(7) Before releasing P under paragraph (6), the Department shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.*

*(8) Nothing in this Article requires the Department to release a person in respect of a sentence under Article 45(2) at any time when that person is liable to be detained in respect of any other sentence.*

***Duration and conditions of licences under Article 46***

***46A.—(1) Where a person is released on licence under Article 46, the licence shall, unless***

previously revoked under Article 46B, remain in force until the expiry of the period for which the person was sentenced to be detained.

(2) A person released on licence under Article 46 shall comply with such conditions as may for the time being be specified in the licence (which may include on release conditions as to supervision by a probation officer).

(3) The Department of Justice shall not, except in accordance with recommendations of the Parole Commissioners for Northern Ireland—

- (a) include a condition in a licence on release,
- (b) subsequently insert a condition in a licence, or
- (c) vary or cancel any condition in a licence.

### **Recall of licensees**

46B.—(1) In this Article—

“P” means a person who has been released on licence under Article 46;

“the Commissioners” and “the Department” have the meanings given in Article 46(1).

(2) The Department may revoke P’s licence and recall P to detention—

- (a) if recommended to do so by the Commissioners, or
- (b) without such a recommendation, if it appears to the Department that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

- (a) shall, on P’s return to detention, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and
- (b) may make representations in writing to the Department with respect to the recall.

(4) The Department shall refer P’s case to the Commissioners.

(5) Where on a reference under paragraph (4) the Commissioners direct P’s immediate release on licence under Article 46, the Department shall give effect to the direction.

(6) The Commissioners shall not give a direction under paragraph (5) unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be confined.

(7) On the revocation of P’s licence, P shall be liable to be detained in pursuance of P’s sentence and, if at large, shall be treated as being unlawfully at large.”.

(5) In Article 46(3) of the Criminal Justice (Northern Ireland) Order 2008 Functions of Parole Commissioners for Northern Ireland) at the end add “or Articles 46 to 46B of the Criminal Justice (Children) (Northern Ireland) Order 2008.”

(6) Where—

- (a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order; and
- (b) the Department, after consultation with the Lord Chief Justice and the trial judge if available, certifies its opinion that, if the amendments made by this section had been in operation at the time when that person was sentenced, the court by which that person was sentenced would have specified as the relevant part of the sentence such part as is specified in the certificate, Article 46 of the 1998 Order (as substituted) shall apply as if the relevant part of that person’s sentence for the purposes of that Article were the part specified in the certificate.

(7) But subsection (6) does not apply (and subsection (8) applies instead) where that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.

(8) Where this subsection applies, paragraphs (3) to (6) of Article 46B of the 1998 Order have effect as if that person had been recalled to prison under paragraph (2) of that Article on commencement.

(9) Articles 46A and 46B of the 1998 Order apply to an existing licensee as they apply to a person who is released on licence under Article 46 of that Order as substituted).

(10) In this section—

“commencement” means the date on which this section comes into operation; “existing licensee” means a person who, before commencement, has been discharged on licence under Article 46 of the 1998 Order and whose licence is in force on commencement;

“the 1998 Order” means the Criminal Justice (Children) (Northern Ireland) Order 1998.’

put and agreed to.”

### **Proposed additional amendment from the Department in relation to the Registered Intermediaries Scheme**

The Committee considered the Department’s proposed additional clause in relation to the Registered Intermediaries Scheme.

Question: “That the Committee is content with the new clause as proposed by the Department as follows:

*New Clause*

*After clause 7 insert—*

*‘Examination of accused through intermediary*

*.—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.*

*(2) At the beginning of paragraph (2) insert “Subject to paragraph (2A),”.*

*(3) After paragraph (2) insert—*

*“(2A) A court may not give a direction under paragraph (3) unless—*

*(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court, and*

*(b) the notice has not been withdrawn.*

*(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn.”.’*

put and agreed to.”

### **Clause 8 – Repeals**

The Committee considered Clause 8 as drafted.

Question: “That the Committee is content with Clause 8 put and agreed to.”

### **Clause 9 – Commencement and transitional, etc. provisions**

The Committee considered the Department’s proposed amendments to Clause 9 as a consequence of the proposed new provisions in relation to the Registered Intermediaries Scheme and the licence arrangements relating to the release of young offenders convicted of certain serious crimes.

Question: That the Committee is content with the following proposed departmental amendments:

*Clause 9, page 8, line 2, after ‘sections 2’ insert ‘, (Examination of accused through intermediary)’.*”

*Clause 9, page 8, line 2*

*After 'sections 2' insert , (Release on licence of child convicted of serious offence)'*

put and agreed to”.

Question: “That the Committee is content with Clause 9 subject to the proposed departmental amendments put and agreed to”.

**Clause 10 – Short title**

The Committee considered Clause 10 as drafted.

Question: “That the Committee is content with Clause 10 put and agreed to.”

**Schedule 4 - Repeals**

The Committee considered a proposed departmental amendment to Schedule 4 as a result of the proposed amendment to Clause 3.

Question: “That the Committee is content with the proposed departmental amendment as follows:

*Schedule 4, page 24, line 17,*

*At end insert—*

*'PART 1  
SEX OFFENDERS*

<i>Short Title</i>	<i>Extent of repeal</i>
<i>The Sexual Offences Act 2003 (c. 42).</i>	<i>Sections 97 to 101. In section 136(8) “101”.</i>

put and agreed to”.

Question: That the Committee is content with Schedule 4 subject to the proposed departmental amendment put and agreed to”.

**Proposed additional clause by the Committee for Justice in relation to scandalising the court**

The Committee considered its proposed additional clause in relation to abolishing the offence of scandalising the court.

Question: “That the Committee is content with the new clause as follows:

*Clause 7, page 7, line 35*

*At end insert –*

***'Abolition of the offence of scandalising the court***

*7A. The common law offence of scandalising the court is abolished.'*

Put and agreed to.”

**Long Title**

The Committee considered proposed departmental amendments to the Long Title as a consequence of the proposed new provisions in relation to the Registered Intermediaries Scheme and the licence arrangements relating to the release of young offenders convicted of certain serious crimes.

Question: “That the Committee is content with the proposed departmental amendments to the Long Title as follows:



*At end insert 'and to provide for the release on licence of persons detained under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998'*

*Leave out 'and to' and insert ';to'*

*At end insert '; and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999.'*

put and agreed to".

Question: That the Committee is content with the Long Title subject to the proposed departmental amendments put and agreed to".

The Chairman advised Members that the formal clause by clause scrutiny of the Criminal Justice Bill had concluded.

The session on the Criminal Justice Bill was covered by Hansard.

Agreed: The Committee agreed to move agenda items 5 and 6 to the end of the meeting.

**Mr Paul Givan MLA**

Chairman, Committee for Justice

13 December 2012

**[EXTRACT]**

# Thursday 13 December 2012

## Room 30, Parliament Buildings

**Present:** Mr Paul Givan MLA (Chairman)  
Mr Raymond McCartney MLA (Deputy Chairman)  
Mr Alex Easton MLA  
Mr Tom Elliott MLA  
Mr Seán Lynch MLA  
Mr Alban Maginness MLA  
Ms Rosaleen McCorley MLA  
Mr Patsy McGlone MLA  
Mr Jim Wells MLA

**Apologies:** Mr Stewart Dickson  
Mr William Humphrey

**In Attendance:** Mrs Christine Darragh (Assembly Clerk)  
Ms Marie Austin (Assistant Assembly Clerk)  
Mrs Roisin Donnelly (Assistant Assembly Clerk)  
Mrs Julie Devlin (Clerical Supervisor)  
Mr Kevin Marks (Clerical Officer)  
Ms Rachel McBride (Clerical Officer)

**2.12 p.m.** The meeting commenced in public session.

#### **4. Committee Stage: Criminal Justice Bill – Approval of Committee Report**

The Committee considered a draft report on the Criminal Justice Bill.

One amendment was proposed to remove paragraph 9 from the Executive Summary of the report.

#### **Title Page, Committee Membership and Powers, Table of Contents and List of Abbreviations**

The Committee considered the Title page, Committee Membership and Powers, Table of Contents and List of Abbreviations.

“Question: That the Committee is content with the Title page, Committee Membership and Powers, Table of Contents and List of Abbreviations as drafted put and agreed to”.

#### **Introduction**

The Committee considered the Introduction section of the report.

“Question: That the Committee is content with the Introduction (paragraphs 1 to 15) as drafted put and agreed to”.

#### **Consideration of Evidence**

The Committee considered the Consideration of Evidence section of the report relating to sex offender provisions.

“Question: That the Committee is content with the Consideration of Evidence section of the report relating to sex offender provisions (paragraphs 1 to 84) as drafted put and agreed to”.

The Committee considered the Consideration of Evidence section of the report relating to human trafficking provisions.

“Question: That the Committee is content with the Consideration of Evidence section of the report relating to human trafficking provisions (paragraphs 85 to 236) as drafted put and agreed to”.

The Committee considered the Consideration of Evidence section of the report relating to DNA/Fingerprint retention provisions.

“Question: That the Committee is content with the Consideration of Evidence section of the report relating to DNA/Fingerprint retention provisions (paragraphs 237 to 424) as drafted put and agreed to”.

#### **Consideration of Other Proposed Provisions for Inclusion in the Bill**

The Committee considered the Consideration of Other Proposed Provisions for Inclusion in the Bill section of the report.

“Question: That the Committee is content with the Consideration of Other Proposed Provisions for Inclusion in the Bill section of the report as drafted put and agreed to”.

#### **Clause by Clause consideration of the Bill**

The Committee considered the Clause by Clause consideration of the Bill section of the report.

“Question: That the Committee is content with the Clause by Clause consideration of the Bill section of the report as drafted put and agreed to”.

#### **Appendices**

The Committee considered the Appendices section of the report.

“Question: That the Committee is content with the contents of the Appendices to be included in the report put and agreed to”.

#### **Executive Summary**

The Committee considered the Executive Summary of the report.

“Question: That the Committee is content with paragraphs 1 to 8 of the Executive Summary as drafted put and agreed to”.

“Question: That the Committee is content that paragraph 9 of the Executive Summary is removed put and agreed to”.

“Question: That the Committee is content with paragraphs 10 to 32 of the Executive Summary as drafted put and agreed to”.

*Agreed:* The Committee agreed that it was content for the Chairman to approve an extract of the Minutes of Proceedings of today’s meeting for inclusion in Appendix 1 of the report.

*Agreed:* The Committee agreed to order the Report on the Criminal Justice Bill (NIA 86/11-15) to be printed.

*Agreed:* The Committee agreed that an electronic copy of the Bill report should be sent to all organisations and individuals who provided evidence to the Committee on the Bill.

The Chairman thanked the Committee team, Hansard and all other Assembly staff who had assisted the Committee during its scrutiny of the Bill.

#### **Mr Paul Givan MLA**

Chairman, Committee for Justice

**[EXTRACT]**





Northern Ireland  
Assembly

Appendix 2

# Minutes of Evidence



## 28 June 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Sydney Anderson  
 Mr Stewart Dickson  
 Mr Tom Elliott  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Mr Patsy McGlone  
 Mr Peter Weir  
 Mr Jim Wells

### Witnesses:

Mr David Hughes *Department of Justice*  
 Mr Ian Kerr  
 Ms Amanda Patterson  
 Ms Debbie Pritchard

1. **The Chairperson:** I welcome David Hughes, head of the policing policy and strategy division; Amanda Patterson from the criminal policy branch; Debbie Pritchard from the human trafficking branch; and Ian Kerr from the police powers and custody branch. The session will be recorded by Hansard and the transcript published in due course. I invite the officials to outline the principles in the Bill.
2. **Mr David Hughes (Department of Justice):** Thank you very much for the opportunity to brief the Committee on the Bill. The key features of the Bill have been brought to the Committee previously and will be familiar to members. There have been a number of changes to the Bill since the Committee last considered it, not least the inclusion of the human trafficking provisions. My colleagues will deal with various policy areas, and we will do our best to answer any questions. I intend to focus on the issues that are new and to which I would want to draw the Committee's attention.
3. Clauses 1 to 4 and schedule 1 cover sex offender notification issues. Paragraph 7 of schedule 1 now requires the Department to issue guidance on applications for review of indefinite notification. That responds to a concern raised by the Attorney General about the possible breach of convention rights if offenders with mental incapacity issues are required to make an application themselves. The guidance will allow for administrative solutions to that issue to be given a statutory backing and for general guidance to the police on the determination of applications.
4. The Attorney General also raised concerns about convention compatibility in relation to the proposed adjustment to the process for attaching notification to offenders who come to Northern Ireland with convictions for sexual offences from jurisdictions outside the UK. As a result, the new provision was limited to only those offenders with convictions from EEA states, the remainder to be subject to notification through the court order process, as at present. That is to protect against the automatic attachment of the requirements, with the associated criminal penalty if the requirement is breached, to those persons with a conviction from a country with a poor human rights record and suspect judicial practices. The Bill retains that amending provision, but Executive approval to introduce it was based on an agreement that further discussions would be held with the Attorney General and the Committee during the Bill's passage and that an amendment to the Bill would be brought forward to allow for a single enhanced process for attaching notification.
5. I turn to clauses 5 and 6 on human trafficking. The EU directive on trafficking in human beings will come into force in April 2013. The Department is required to legislate to amend the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants,

- etc.) Act 2004 to introduce new offences to comply with the directive.
6. Clause 5 adds section 58A to the Sexual Offences Act 2003 and creates an offence where a person is trafficked for sexual exploitation anywhere outside the United Kingdom by British citizens, habitual residents of Northern Ireland and bodies incorporated under the law of a part of the UK. The offence will deal with the abuse of trafficked victims at all stages of their journey or ongoing travel. Clause 6 amends the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and creates a similar offence to allow for the prosecution of a person who has trafficked someone anywhere outside the United Kingdom for labour or other exploitation. It also amends the offence by removing the requirement for the victim to have previously been trafficked. Those amendments mean that an offence is committed where a United Kingdom resident, who has not previously been trafficked into the UK, is trafficked within the UK. They will provide for the prosecution of a UK national who has trafficked someone anywhere outside the UK; for example, if a UK national trafficked a person between Mexico and Brazil. The creation of those two offences received overwhelming support in the consultation on the EU directive that the Department carried out.
  7. Suggestions for further legislative change have been put forward by Lord Morrow in a draft private Member's Bill, which he has shared with the Minister, and by others who responded to the recent consultation on the EU directive. Those broader issues are being considered in more detail, and the Minister will respond to Lord Morrow on the draft Bill and brief the Justice Committee on the issues as soon as possible. The priority at this stage is to make provision for the amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to ensure that the law in Northern Ireland complies with the criminal aspects in the EU directive and that we meet the deadline for its implementation in April 2013.
  8. I turn to clause 7 and schedules 2 and 3. As mentioned in the paper provided to the Committee, the changes to the biometric provisions replicate late amendments to the Protection of Freedoms Act 2012 and reflect discussions and correspondence with parties and the Attorney General's office. Originally, the intention was to destroy all DNA samples once a profile had been generated or after six months. However, the Crown Prosecution Service had concerns that, in a limited number of cases each year, it would be necessary to retain individual samples in order to deal with any subsequent challenge by the defence to the comparison made between the DNA of the individual and that found at the crime scene. It was concerned that, without such retention, it would be unable to withstand such a challenge and acquittals on technical grounds might result. The Protection of Freedoms Act 2012 was amended accordingly, and, having consulted the Public Prosecution Service and Forensic Science Northern Ireland, we have made a corresponding change to the Bill.
  9. We are also assessing the relative merits of having applications to retain material in prescribed circumstances referred to the courts rather than the biometric commissioner. We have a bit of work to do with the police in trying to establish the likely number of applications per annum, which we would need to have a clearer picture of before approaching the Lord Chief Justice if we decide to go down the courts route.
  10. On the suggestion of the Attorney General, the Bill now provides that, if material taken unlawfully or on the basis of mistaken identity has potential evidential value, it may be retained for the duration of the associated investigation or proceedings. The effect of the illegality will be considered by the court as part of its decision on the admissibility of evidence. The Attorney General was concerned that the requirement in the Bill to automatically destroy such material went beyond the



- normal rules of evidence. So, rather than being prescriptive in the Bill, we have agreed to leave any such decision to the courts. Sub-paragraph 63B(3) (a) makes the destruction requirements subordinate to article 63C.
11. Again at the suggestion of the Attorney General, the Bill now accommodates cases where biometric material from one individual may be probative against another; for example, where a co-accused has said that he was with the person to whom the biometric material relates at the relevant time, and the biometric evidence is subsequently linked to the crime scene.
  12. Finally, we have removed the requirement to destroy impressions of footwear. As the Attorney General observed, it is not at all clear that article 8 rights are engaged in respect of footwear impressions, and the jurisprudence of the European Court imposes no obligation in that regard.
  13. That is what I have to say by way of introduction. I am happy to answer questions.
  14. **The Chairperson:** Thank you. I do not intend to go into too much detail, because, obviously, we are going to have a lot of scrutiny work to go through on each of the bits of legislation. A lot of arguments have been raised before in previous Committee sessions. They will be available, and no doubt we will draw upon them when we look at this. I will ask a general question. A previous point raised related to the process for the sexual offences register, particularly around the appeal to the Chief Constable and then to the court, as opposed to an appeal to the Chief Constable and then judicially review the Chief Constable. I see that, in the legislation, we are remaining with the original position. Will you outline why you feel that it is necessary to retain that position? What has England done in respect of that?
  15. **Ms Amanda Patterson (Department of Justice):** On the process in England and Wales, the remedial order has been debated in the House of Commons and is awaiting debate in the House of Lords. Given the recommendation of the Joint Committee on Human Rights in Westminster, which said that not having a court process would not resolve the incompatibility, the Home Office has inserted a process for appeal to the Magistrates' Court in England and Wales. That means that all three UK jurisdictions are now proposing to have a court process, albeit in different forms and different courts. That is the main reason why it is still included in the Northern Ireland process.
  16. **The Chairperson:** OK. On the human trafficking aspect of the Bill, are we taking a minimal approach to applying the EU directive? Some concerns already seem to be being raised that more could be done.
  17. **Ms Debbie Pritchard (Department of Justice):** What we are concentrating on, and our priority at the moment, is to ensure that we comply with the criminal aspects of the EU directive, but, in the consultation on the EU directive and in Lord Morrow's Bill, other suggestions have been made in relation to legislation. We are now starting to go through those, and we will provide further advice to the Minister and come back to the Committee when we have had a chance to analyse what people have said.
  18. **Mr McCartney:** As the Chair said, we have had some of this discussion, and, no doubt, we will have it in the future. I just want to focus on the DNA strand and to give our position, which, I feel, the Department needs to address as we take the legislation through the various stages. There are a number of issues. One of them is that, as this is now proposed and, indeed, as it is now in situ, we believe that the size of the database is of a disproportionate scale. We also believe that the presumption of innocence is undermined by the proposals that are now tabled in front of us. Thirdly, we are not satisfied that the fact that this had to be introduced in respect of divergence from the European convention has been

- addressed properly. I am not asking you to comment today, but that will certainly be part of the commentary as we take the Bill forward.
19. My understanding is that, at present, the database is 10 times greater than that in the United States of America and five times above the European average. We need an explanation of why that is the case in order to convince us that it is the right thing to do.
20. Last September, the issue of presumption of innocence was raised. Basil McCrea asked a question on the issue that the legislation states that, irrespective of someone being found innocent in court, their DNA will be retained. The answer was that sufficient suspicion of an individual is sufficient reason to retain DNA in those circumstances. That undermines the principle of presumption of innocence.
21. On the matter of the divergence, which part of the judgement brought us to this? The court ruled that there was disproportionate interference and that it could not be regarded as necessary in a democratic society. What part of the ruling and the legislation is necessary to protect us? Those are the broad principles from which we will approach this.
22. **Mr Hughes:** In the context of looking at the principles of the Bill, it is very useful to hear the principles of objection to the way in which the Bill has been cast. Clearly, those may be some of the key grounds upon which the discussion may be taken forward.
23. **Mr McCartney:** How many people in this jurisdiction are currently on the database? Across England, Scotland, Wales and the North, it is estimated that one in five of the people on the database has no convictions. That seems to be a very high proportion.
24. **Mr Hughes:** You mentioned the statistics on the equivalent database in the United States.
25. **Mr McCartney:** From research, my understanding is that it is 10 times greater than in the United States and
- five times above the European average. Indeed, there is the staggering statistic that it is 50 times bigger than the French equivalent.
26. **Mr Hughes:** Is that based on absolute numbers or is it a proportion?
27. **Mr McCartney:** It is a proportion.
28. **Mr Hughes:** The point that you make about the number of individuals on the database against whom there is no conviction shows precisely why the changes are needed. You have identified one of the key points that the European Court made. The European Court also pointed the UK Government to the example in Scotland of a proportionate approach, and we have discussed a number of times how what we have here might compare with the Scottish model rather than an absolute model.
29. **Mr McCartney:** As this reads, I do not see anything that will reduce that ratio of one in five. My reading of the legislation does not instil in me that there will be a reduction of the one-in-five proportion. In essence, people with no record find the frame in which they are kept on the database is that, as you said last September in answer to Basil McCrea, there is sufficient suspicion.
30. **Mr Ian Kerr (Department of Justice):** The standards that will be applied under the new framework will be applied to legacy material — people who are already on the database. A deletion instruction will be issued in parallel with the coming into force of the legislation that will provide for that material, which, presumably, makes up the fifth that you are talking about, to be removed from the database in accordance with the new provisions.
31. **Mr Hughes:** The framework that is contained in the legislation would not only be applied going forward but would be applied to the existing database. There is no doubt that there would have to be a reduction in the number of people on the database against whom there is no conviction.

32. **Mr McCartney:** That is precisely the point that I am making. I do not see how it is laid out that that will be the case. I will make a broad point, because I know that we will come back to this and that today is maybe not the time for discussion. If we enact a piece of legislation, someone may take a case to the European Court, resulting in the finding that it is not regarded as necessary in a democratic society. We have to satisfy ourselves that someone would not win that case. We are here because someone has already won the case. So, we have to satisfy ourselves that we are not being asked to support legislation that could bring you back to the same position.
33. **Mr Kerr:** But, if we are designing legislative provisions around the model that is in place in Scotland, which the European Court directed us to as a satisfactory approach, it gives us a good starting point.
34. **Mr McGlone:** I have just a small point, although it might not be small to those it concerns. In regard to recordable offences and the retention of the likes of fingerprints and DNA profiles, are we talking about all offences for which a person has been convicted? I am thinking of people who, for a variety of reasons, have not been able to pay fines and have been convicted on the foot of that. Is the intention to retain their fingerprints and DNA profile and the likes for whatever period of time?
35. **Mr Kerr:** If the offence in question is one that carries a custodial sentence, it would be a recordable offence.
36. **Mr McGlone:** In other words, what we are saying is that if someone has not paid their fines — probably, as in most cases, because they have fallen on hard times — and wound up in prison for a day or two, it is a recordable offence and, therefore, their DNA and fingerprints are retained.
37. **Mr Kerr:** The legislation will provide for them to be retained.
38. **Mr McGlone:** Does that mean that the DNA profile and fingerprints will be retained?
39. **Mr Kerr:** The police will be able to retain them under the terms of the legislation. That is what I am saying.
40. **Mr McGlone:** Sorry —
41. **Mr Kerr:** The legislation is enabling, not prescriptive. It does not say, “The police shall retain them”, it says, “The police may retain them”. So, there is discretion there.
42. **Mr McGlone:** Is it down to the individual police officer to determine whether that discretion is used?
43. **Mr Kerr:** No, the material will be taken and will be retained. It is open to anyone, under the existing arrangements and those that we propose to put in place, to apply to the police to have their material removed from the database. The police would consider whether to do that on the basis of the application. Our intention is to put the onus for that on the individual rather than on the police.
44. **Mr McGlone:** But, the ultimate determination lies with the police.
45. **Mr Kerr:** Yes, as long as the police are operating within the legislative framework.
46. **Mr Lynch:** Mr McCartney, Raymond, covered most of what I wanted to ask. I will take up two points with you. The first is about the biometric commissioner. When you were here back in September, the majority of the Committee said that the decisions should be taken by the courts. This is going to be a fully funded, special commissioner. Why do you not drop that idea and allow the courts to decide? The courts decide on the innocence or guilt of a person.
47. **Mr Kerr:** Much will depend on the volume of cases that we are likely to see, and that is something that we are still trying to establish in discussion with the police. We need to have the precise terms of the prescribed circumstances defined, and then we need to look at the likely volume of

- offences per annum to establish the pool from which the applications would be made in order to give us some sort of indication of numbers. If it makes sense, given the numbers concerned, for the applications to be considered by the courts, that would be an avenue that we would pursue. We have no objection in principle to it.
48. If, on the other hand, we are looking at a large number of cases per annum, the Lord Chief Justice might be reluctant to impose that sort of burden on the courts, and it might make better sense for us to establish an office. However, there may be options other than establishing a brand new office open to us. There may be capacity within or underneath the existing justice umbrella. Someone already known to us and operating within that umbrella might be able to undertake the task, providing there was no conflict of interest between their current role and the role that we were proposing for them and, of course, providing that they were prepared to take on the task.
49. **Mr Lynch:** So, this is not fully decided upon yet.
50. **Mr Kerr:** Not yet. We agreed with the Minister that we would introduce the Bill as drafted but will continue to explore this question. If we are satisfied that there is merit in putting it the way of the courts and the courts agree to take it on, we will table an amendment to that effect.
51. **Mr Lynch:** Last September, one of the officials raised the potential for a legal challenge on photographs retained by the PSNI. Why do you not provide a remedy in the Bill? Why retain photographs if a European ruling has said that DNA and fingerprints should be destroyed?
52. **Mr Kerr:** The Marper judgement, to which we were responding, did not include photographs in the same category. Photographs are not searchable in any meaningful sense in the way that DNA and fingerprints are, so they are not seen as representing the same intrusion to a person's privacy in that sense. It has been our understanding that the police have taken their own legal advice on the photograph question and were moving to put in place an administrative solution to that.
53. **Mr Elliott:** Thank you, folks. Does the proposal deal with only the European legislation, or does it go further than is required in the European directives?
54. **Mr Kerr:** Which proposal in particular?
55. **Mr Elliott:** The Criminal Justice Bill.
56. **Mr Kerr:** Several European issues are involved.
57. **Mr Hughes:** To which of the three parts — the DNA part, the sex offender notification part or the human trafficking part — are you referring? They respond differently to different things, although they are grouped together.
58. **Mr Elliott:** Let us take the DNA part first.
59. **Mr Kerr:** That is a response to a ruling in the European Court that the existing framework was not compliant with the European Convention on Human Rights (ECHR). The court helpfully pointed us in the direction of the Scottish model, on which both we and England and Wales have based our response to that ruling. On the DNA side, we are responding to a judgement in the European Court of Human Rights.
60. **Mr Elliott:** I know that, but I am trying to establish whether it is going much further than what was required in that judgement. For example, is the Scottish model much more strict in its regime than might be required from the European convention?
61. **Mr Kerr:** I do not think so. Basically —
62. **Mr Hughes:** It is not precisely the same, and it could be argued that, in one or two places, it goes further — stricter is not necessarily the right word — and that, in other places, it does not go quite as far. It is not the same, but it takes on board the critical elements that the court judgement made — that the existing policy made no distinction

and was not proportionate. So, it is a framework that does make distinctions and is proportionate.

63. **Mr Kerr:** Essentially, the court criticised the indefinite retention of material from people who had not been convicted. It looked to Scotland and saw that Scotland already had arrangements in place that satisfied the point that it was objecting to. That was as much as it said, so we have not had a view on to what extent the rest of the Scottish model and our models are compliant with it. We have taken that in good faith, if you like.
64. **The Chairperson:** I appreciate the fact that some members were not here when we initially looked at this, but we will go through it at the scrutiny stage. I will want to look at our models compared with those in Scotland. We recognise that there are European Court rulings, and we need to find ways to comply with those. It is a question of how we do that and finding some differences that there might be. I will not prolong things, because we will look at this in some detail. Thank you very much for coming.



## 20 September 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Sydney Anderson  
 Mr Stewart Dickson  
 Mr Tom Elliott  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Jim Wells

### Witnesses:

Mr Ian Kerr *Department of Justice*  
 Ms Debbie Pritchard  
 Mr Simon Rogers

65. **The Chairperson:** I welcome Simon Rogers, deputy director of the protection and organised crime division; Debbie Pritchard, the head of the human trafficking branch; and Ian Kerr, the Criminal Justice Bill manager. You are very welcome to the meeting. This session will be recorded by Hansard. Mr Rogers, I hand over to you.
66. **Mr Simon Rogers (Department of Justice):** OK. Thank you, Chair. I will focus on clauses 5 and 6 of the Criminal Justice Bill and the related schedule 4. Changes are required to the current legislation to ensure that Northern Ireland complies with the criminal aspects of the EU directive on human trafficking, which must be implemented by 6 April 2013. Article 2 of the directive sets out the types of trafficking acts that must be made punishable in national law. These are set out to include sexual exploitation, forced labour exploitation and exploitation by the removal of organs. Article 10 of the directive requires the United Kingdom to enforce the offences under the directive within United Kingdom territory and against their nationals outside the United Kingdom. That is a mandatory obligation under article 10(1). Article 10(2) provides that member states may

extend extraterritorial jurisdiction against companies and persons habitually resident in their territory. That is a discretionary provision.

67. In looking at that aspect of the directive, we have identified a couple of areas that are not covered by current legislation. We are seeking to cover those by the creation of the two new offences set out in clauses 5 and 6. Clause 5 adds section 58(A) to the Sexual Offences Act 2003 and creates an offence where a person is trafficked anywhere outside the United Kingdom for sexual exploitation by British citizens, habitual residents of Northern Ireland and bodies incorporated under the law of a part of the United Kingdom. The offence will deal with the abuse of trafficked victims at all stages of their journey or ongoing travel. At present, sections 57 to 59 of the Act only establish criminal offences for trafficking persons into, within and out of the United Kingdom. In respect of labour or other exploitation, clause 6 amends the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and creates a similar offence to allow for the prosecution of a person who has trafficked someone anywhere outside the United Kingdom. In addition, clause 6 amends legislation so that an offence is committed where a United Kingdom resident who has not previously been trafficked into the United Kingdom is trafficked for labour or other exploitation wholly within the United Kingdom. That is already an offence for sexual exploitation. The maximum sentence for someone found guilty of committing any of the offences that I have mentioned will be 14 years' imprisonment. Schedule 4 contains a number of consequential amendments and repeals.
68. The Committee may wish to note that we are not mirroring the changes made to human trafficking legislation in England and Wales. Sections 109 and 110 of

- the Protection of Freedoms Act 2012 implement the mandatory changes required to comply with article 10(1) of the directive. The provisions before us today will make those changes for Northern Ireland but will also implement the discretionary changes set out in the article by extending to habitual residents and legal persons.
69. Comments were made at Second Stage of the Bill that the Department should not take a minimalist approach to the directive, and that is certainly not our intention. Indeed, we are clear that the Minister, as chair of the Organised Crime Task Force, expects all partners to tackle human rights issues energetically on a range of fronts. We are seeking to comply with the letter and spirit of the directive.
70. In our analysis of the directive, the comments received on it, Lord Morrow's Bill and the various reports we have received, we have not identified any other changes that we believe we need to make to primary legislation. However, there are other steps that we will take outside of primary legislation, for example, on NGO consultation and guidance. In other words, the clauses are not the sum total of all the work that we are doing in respect of the directive but will simply bring in the criminal aspects.
71. Some concerns were expressed about the deficiency of the provisions. If the Committee found it helpful, we would be happy to address those, both as regards their extent and the penalties, although the researcher has touched on some of those this afternoon. You have also sent us the responses the Committee received to its call for evidence on the Bill. We will work our way through those and respond to the Committee in time for it to consider those responses before we come back to you on 8 November. By that stage, you will also have our analysis of Northern Ireland's compliance with the directive at large and the Minister's response to Lord Morrow on his Bill. That covers the clauses and our wider work.
72. **The Chairperson:** OK. Your response to Lord Morrow's Bill and your detailed response to how you will deal with the issues raised with the Committee will be important and will, obviously, feed into our deliberations.
73. I have a couple of questions. First, summary conviction for either offence has been reduced to a term not exceeding six months or a fine not exceeding the statutory maximum. I think that the original proposal in the consultation was for a term of imprisonment not exceeding 12 months. Why the change?
74. **Mr Simon Rogers:** Regrettably, that was an error in the consultation document. We had two different references, and the document should have said six months, which is the standard provision in Northern Ireland. We transposed language from the consultation in England and Wales, where there is a different level. I am afraid that that was an error.
75. **The Chairperson:** Under those clauses, is it possible that, in Northern Ireland, someone who is found guilty of a trafficking offence may not receive a prison sentence and may only receive a fine? Is there that potential?
76. **Mr Simon Rogers:** Yes. There is that potential for any offence, including human trafficking offences. Obviously, new sentencing guidelines for human trafficking offences have been set down by Judge Burgess, the Recorder of Belfast, in the case of *R v Pis*, which was the first case of its type here. Counsel asked the Lord Chief Justice to set out guidelines in his sentencing guidelines, so any human trafficking case that is being considered in the courts now should take account of that precedent. Indeed, the last case that went through did indeed take account of it. Is it possible that a fine would be given? That would be down to judicial discretion.
77. **The Chairperson:** In taking that forward in legislation, has the Department given



- any thought to having a mandatory minimum custodial sentence?
78. **Mr Simon Rogers:** We do not think that that would be appropriate. As with all sentencing matters, the judiciary obviously jealously guards its discretion on what sentence it might impose. Only in a rare instance would one have a mandatory minimum sentence. Our approach is to give the judiciary the discretion to sentence appropriately and to seek sentencing guidance or guidelines up to the maximum, which would then guide the individual sentencing judge on what the appropriate sentence should be.
79. **The Chairperson:** I appreciate that that might be your position. However, it may not be the position of some around the table that the judiciary should be given that discretion. As the Attorney General points out, ultimately, politicians are the guardians of the rule of law. We will not debate that one at this particular point in the meeting.
80. **Mr Wells:** Simon, I do not know whether you attended the briefing that we had in the Long Gallery just before recess at which the PSNI gave evidence about the victims of that ghastly activity. One account that always sticks with me is that of the young girl whom they were able to identify by the scratchings of her fingernails as she tried dreadfully hard to get out of her cell — that is the only word for it. That woman was being forced to have sex with at least 20 different men a day. It is very hard to remain dispassionate when you are dealing with that ghastly, horrible activity. I am just wondering about the fact that someone could do all that and not face a mandatory prison sentence. That would strike most people as being absolutely appalling. I am trying to remain as cool as I can about this, but that briefing that I heard that night will remain with me for the rest of my life. It lasted three hours, and it was three very long hours, I can tell you.
81. Are we in a position in which we have to deliver the European directive's minimum sentence or can we go above the levels of its conditions and punishments? Is it wrong of the Committee and the Assembly to have an overall aim in life of making this part of Europe the part where it is most difficult to carry out that vile trade? Is that wrong? Do we have to keep in tandem with everywhere else because of the directive?
82. **Mr Simon Rogers:** No, obviously, we do not have to do that, but the sentencing framework that is already in place goes beyond what the directive seeks. The maximum sentence set by the directive is 10 years and our maximum sentence is 14 years, so we are already ahead of the directive.
83. As an official who works in this area, I can tell you that I understand the point that you are making about the human nature of this. I have also seen that briefing on more than one occasion, and I have read various books by victims of trafficking. It is a harrowing subject. That is in the back of our minds as we work on this almost on a daily basis. Therefore, I readily accept the point that you make that this is an appalling crime, but it is not the case that we are doing the minimum. In the sentencing area in particular, we are already ahead of what the directive, which is meant to set the standard, is asking for.
84. **Mr Wells:** We are going above the minimum standards in the directive.
85. **Mr Simon Rogers:** Yes.
86. **Mr Wells:** I am a Member of the British-Irish Parliamentary Assembly, and we are doing an inquiry into trafficking with all the jurisdictions in the British Isles. The most shocking statistic that came out of our first hearing in Cardiff was that the vast majority of those who are trafficked come into the United Kingdom legally. They are not smuggled in. They are brought in with work visas for things such as hairdressing, catering, cooking, etc. Once they get in, they are immediately hijacked at the airport and locked in brothels. That is where the vast majority of women end up. The men end up in gangs working in agriculture.

- Surely one of the quickest ways of solving that problem is to stop that obvious loophole. From certain countries in the world, thousands of people are being trafficked into Britain totally legally, with all their documents intact, and those documents are removed from them as soon as they set foot outside the airport. The same countries come up time and time again. Places such as Vietnam, Moldova and Romania come up time and time again when we talk about trafficking, yet no one ever thinks, "Hang on, do we need 1,000 more hairdressers from Vietnam. Is there an issue here?" I have nothing against the Vietnamese, but does that not start bells ringing? Is there anything in the legislation that can control that aspect of it? We are providing an open goal for potential traffickers by allowing that situation to continue.
87. **Mr Simon Rogers:** Nothing can stop someone from coming into the United Kingdom legally, but I can assure you that analysis is done of the country of origin of the people rescued from human trafficking. There is an interagency approach, which I hope you will see in a minute when we move on to the next session, and the UK strategy on human trafficking sets out that we do not sit in Northern Ireland and wait to see what happens. Embassies are alive to the countries where victims come from, and they work with those countries to try to avoid circumstances in which someone feels that they have been forced from their country or encouraged to come somewhere else. Each embassy now has the issue of human trafficking built into its business plan. So, there is a reach beyond us sitting in Northern Ireland thinking about where the next victim is or police going into brothels or dealing with labour exploitation. It is not a question of waiting for the victims to turn up. However, we have to balance that against the right of people to come in legally and move around the EU taking up legitimate employment. You are right that a lot of people come in legally but then end up being exploited in the different ways that you have described.
88. **Mr Wells:** The other issue is that a lot of folk are trafficked into the Irish Republic and end up in Northern Ireland and other parts of the United Kingdom. Is there any liaison with the authorities in the Republic? There is no sense in us tightening up our legislation if there is still a route in via the Republic, and, of course, you can drive across the border anywhere; there is no issue there. What sort of liaison is going on with the authorities down south?
89. **Mr Simon Rogers:** Detective Superintendent Phil Marshall might be able to cover that in a moment, but I can tell you that, for example, our immigration and human trafficking subgroup, which sits under the Organised Crime Task Force, has the gardaí on it. At those meetings, they will talk about operational issues. So, there is an exchange at that level. There have also been joint cross-border operations between the PSNI and the gardaí targeting crime gangs, etc, that are suspected of being involved in this sort of work.
90. **Mr Wells:** Where it is relevant to this section is whether the Irish Republic is bringing in equivalent legislation to implement the directive in tandem with what we are doing. Is it behind or ahead of us?
91. **Ms Debbie Pritchard (Department of Justice):** I will need to check and come back to the Committee on exactly where the Irish Republic is on that. We have been engaging with officials on specific aspects, but, generally, it would be best if we were to check and come back to the Committee.
92. **Mr Dickson:** Thank you for the presentation and the helpful explanation. I want to come back to the maximum six months' imprisonment for summary conviction. You explained to us that it was originally 12 months but that was a read-across from the UK legislation, where it is 12 months. Why are we not having 12 months in Northern Ireland? Why have we reverted to six? I differ from Mr Wells about the mandatory sentence. I think that

- it is appropriate and important that the judiciary have that discretion, but we need to provide it with the base tools, which include the extent of the sentencing facilities available to it. It seems to me that if it is 12 months in the rest of the United Kingdom and only six months in Northern Ireland, if you think you are going to get caught, Northern Ireland is the place where you are going to get in and out of prison quicker than anywhere in the rest of the United Kingdom. That seems to me to be rather unfair and just illogical. Is there an explanation as to why it cannot be 12 months?
93. **Ms Pritchard:** The explanation is that, first of all, as I have said, in relation to the consultation document, we apologise, but it was an error that —
94. **Mr Dickson:** I understand that, but you have actually —
95. **Ms Pritchard:** In relation to the difference in procedures in sentencing between here and in England and Wales, there is a general criminal law procedure difference in how the two court systems operate. When dealing with summary offences here, a Northern Ireland district judge has power, under the Magistrates' Court (Northern Ireland) Order 1981, to impose a fine of up to a maximum of £5,000 or six months in prison, or both. The 1981 Order allows it where an indictable offence can be heard in the Magistrates' Court and the sentence exceeds six months — for example, if it were 12 months or up to that. The defendant may opt for trial in the higher court, and where the defendant does not opt to go to the higher court, the district judge can then impose a sentence of up to 12 months.
96. **Mr Dickson:** Is that the same situation in the United Kingdom?
97. **Ms Pritchard:** The courts there operate in a different way, and the lower court there can impose 12 months.
98. **Mr Dickson:** I simply do not understand why we cannot change the law in this respect to allow the lower court to have that authority in this particular offence
- to bring us into line with the rest of the United Kingdom. It seems a very simple process to me. I think that you are using rules and regulations rather than actually using an appropriate sentence.
99. **Mr Simon Rogers:** That would, of course, apply only to cases prosecuted in the Magistrates' Court. Obviously the Crown Court would not be so hampered.
100. **Mr Dickson:** I understand that.
101. **Mr Simon Rogers:** Secondly, the six-month ceiling, if I can call it that, applies to any offence in Northern Ireland. It is not specific to human trafficking. Therefore, we would be completely rewriting the manual for the justice system.
102. **Mr Dickson:** No, it would just be putting in an exception in respect of human trafficking. You would not be rewriting the entire manual for everything else, although there may be some value in doing that, but that is a different story. All I am suggesting is that you make an exception with regard to the lower courts' sentencing guidelines to allow them to impose up to 12 months in respect of human trafficking.
103. **The Chairperson:** A point raised by some of the respondents is that, with the system here, it is pretty complicated to secure convictions around this type of legislation. Is that something that the Department is thinking about — that it would be better to have a single piece of legislation around all of that?
104. **Mr Simon Rogers:** No, we are not. Our view is that this is the first time that it has come up as an issue. It is certainly not an issue that has been raised with us by any of the law enforcement agencies in the use of legislation. It has come up in the context of England and Wales, where the provisions around sexual exploitation were placed in one section, but that one section breaks down into subsections, whereas we have separate offences, in sequence, in the Sexual Offences Act. Likewise, with labour exploitation, they have put all the offences in one section. Under section 4, we will then have that, so we are not in a dissimilar position on

- section 4, the irony being that theirs are in subsections.
105. We do not see it as a burning issue that the legislation is not in one place. In an ideal world, it would be, and we accept that, but we think that there are a lot of other things that we should tackle before we should be unduly concerned about that, particularly given that no one from the law enforcement field has raised it with us. Certainly, if the Public Prosecution Service (PPS) was saying that it could not manage prosecutions because it did not understand the legislation, it would be a top priority for us to resolve that, but that is not the message that we are getting.
106. **The Chairperson:** Mr Dickson, do you want to come back in?
107. **Mr Dickson:** Very briefly, Chair. I think this raises an interesting issue for us. Perhaps some research could be done from the Committee's perspective. I would like to know the extent of benefit to criminals of having the lower sentencing regime available in the Magistrates' Court in comparison with someone committing the same offence in the rest of the United Kingdom, whether it is sexual exploitation or any other offence. It seems to me that you can get away with a lower sentence in Northern Ireland. I do not know whether 12 months applies in the United Kingdom to other offences, over and above sexual exploitation, but I think that we have hit an interesting point here. I do not see why criminals should benefit from Northern Ireland having a lower tariff regime, or whatever the appropriate term is.
108. **Mr Wells:** I agree with Mr Dickson. I also think that it is sending out a signal. Do we take this issue really seriously? Yes, we do.
109. The other issue I would like to ask about is, given the serious nature of these offences, how could these cases ever end up being heard in a Magistrate's Court, which has a lower tariff? I would have thought it would go straight to a much higher court, given the fact that, even at its lowest level, this is modern-day slavery. There is no other term for it. It is an awful blemish on Northern Ireland that we tolerate this at all, or even that we have it. Perhaps the only good thing about the Troubles, if there was anything, was that it excluded this type of activity, because now it is rampant. We need to send a very clear message that we will not tolerate this on this part of the island or in the United Kingdom. We will not have it. Let others worry about what barriers they put up to it. Northern Ireland has to become known as the most difficult part of the British Isles in which to continue this ghastly activity.
110. **Mr McCartney:** The Chair made the point about the need for a single piece of legislation. You said that it was not really a burning issue, nor had the PPS raised it, but why would we not consider it if it is the right thing to do? You can understand a lawyer piecing together a way through complicated legislation, but if the opportunity presents itself to make this very clear and precise, why would we not take that opportunity?
111. **Mr Simon Rogers:** I do not think that those operating in the field regard it as being imprecise or unclear. Obviously, the task of translating the different provisions into a single piece of legislation is an area of work that, for me, would not be as high a priority as getting guidance out for front line victims, engaging with NGOs or making changes to the sentencing framework as required. I think I said that, in an ideal world, yes, it would be done, but it is not uncommon to legislation across Northern Ireland or the United Kingdom for everything not to be in a neat parcel. Amendments will be made, and then there will be amendments on top of amendments. As an official trying to work my way through legislation, I can see the difficulties, but, at the same time, this is not an area in which we are being pressed to put everything into one statute.
112. **Mr McCartney:** You could maybe say that there is a need to do it in the short term, but, in the long term, would

- there be any sense of making it less cumbersome for anybody operating it, never mind whether they are good at it?
113. **Mr Simon Rogers:** It would be ideal to have it done, yes.
114. **Mr McCartney:** Will the legislation include this in the range of offences for which an appeal can be heard if the sentence is considered unduly lenient? Will this fit into that category?
115. **Mr Simon Rogers:** Yes; both the sexual exploitation and the labour aspects. On the sexual exploitation side, it is provided for in the legislation. On the labour exploitation side, that will be done through subordinate legislation, because that is how we were advised it has to be done. We will be coming to this Committee in due course to seek approval to do that.
116. **Mr A Maginness:** I am seeking clarification on the previous remarks about sentencing. Mr Rogers, are you saying that none of these offences could be taken to the Crown Court?
117. **Mr Simon Rogers:** No.
118. **Mr A Maginness:** You are not. So, any offence that is taken to the Magistrate's Court or the district court, or whatever you want to call it, the maximum sentence there would be six months. If it is taken to the Crown Court —
119. **Mr Simon Rogers:** Fourteen years.
120. **Mr A Maginness:** Fourteen years. What determines whether an offence is taken to the Magistrates' Court or the Crown Court? Is it the gravity of the offence or the multiplicity of the offences?
121. **Mr Simon Rogers:** Yes. That is really for the Public Prosecution Service to determine, not the Department. Indeed, it would not welcome my involving myself in that. But, yes, that is exactly what it is.
122. **Mr A Maginness:** In this jurisdiction, a case involving some outrageous criminality in relation to trafficking would not be confined simply to the Magistrates' Court?
123. **Mr Simon Rogers:** No.
124. **The Chairperson:** If a UK citizen commits an offence abroad, how do you determine where they are tried? Will it be the case that a Northern Ireland citizen will be tried in Northern Ireland and a Scottish citizen will be tried in Scotland? Could someone say, "Even though the offence was committed outside the UK, it would be better if the offender was sentenced in Northern Ireland, because they will face a stiffer sentencing framework than in the rest of the UK"? How will you determine exactly who will be tried where when an offence is committed outside the UK?
125. **Mr Simon Rogers:** By an individual who is outside the UK?
126. **The Chairperson:** Yes.
127. **Mr Simon Rogers:** In that situation, as with any other offence, the offence is committed in that country. The provisions in the directive relate to offenders operating within the United Kingdom, if I can put it that way. You may be living in the United Kingdom and trafficking someone from Mexico to Brazil, or you may be living in the United Kingdom and trafficking someone from London to Belfast, or vice versa. If you commit the offence in Spain, however, you are subject to Spanish law. Like us, the Spanish Government have to comply with the directive. We do not make provision for that because it is not our jurisdiction.
128. **Ms McCorley:** Go raibh maith agat. Can you tell me what you see as the main difference between the Human Trafficking Bill and what is in Lord Morrow's Bill? Do you feel that his Bill was helpful in drafting the legislation?
129. **Mr Simon Rogers:** The original version of Lord Morrow's Bill that we received — I am not 100% certain whether it went out to other consultees, but I do not think that it did — included provisions to do, in effect, exactly what clauses 5 and 6 do. Those provisions have been taken out of the latest version that he has produced. I am hoping that he has done that on the basis that he thinks

- the provisions in clauses 5 and 6 adequately cover that area.
130. It is evident from Lord Morrow's Bill that he wants to see legislation brought forward to deal with other areas within and outwith the directive. I think I mentioned earlier that we are looking at that Bill. The Minister has undertaken to write to Lord Morrow and has a meeting scheduled with him in early October. The end date for Lord Morrow's consultation is 18 October. As I said today, and as we have stated in writing to the Committee, we will send to the Committee a copy of the response to Lord Morrow so that you can see what we say to him.
131. **Mr Elliott:** I just want to make a quick point. Thanks for the presentation. This may not be for these officials but the Public Prosecution Service, if it is the agency directing this. There is a huge difference between a sentence of six months and 14 years. I would have thought that we would need some idea of where the line is to be drawn between who goes to which court. I think that that is quite significant in deciding whether to accept six months at this level.
132. **Mr Simon Rogers:** The Public Prosecution Service published a document that went out for consultation from 8 June until 3 September. The document is on what it calls a policy for prosecuting cases of human trafficking, and I think it is instructive. I can certainly give the Committee Clerk a copy of that if you do not have it. It sets out the role of the Public Prosecution Service when dealing with decisions, victims and witnesses. It goes through the whole array of issues for the Public Prosecution Service in the context of human trafficking and sets out the tests for the prosecution, such as evidential tests and the public interest test. I hope that that will give you the answer.
133. **Mr Anderson:** Thank you for the presentation. I want to go back to what you, Chair, started at the beginning with a reference to the possibility of receiving only a fine and not a custodial sentence. When you think of the example that my colleague Jim gave of that young girl being locked away in what he termed a cell, I find it difficult to understand that we may be introducing something here that will allow the perpetrators of such vile acts to get away with simply a fine. I think Mr Rogers said that the Department was not taking a minimalist approach to this. How can you convince me or the Committee that it is anything but minimalist, when you consider that that could happen — that someone could walk away with a fine or something like that and not even a minimum sentence? I certainly think that you have some convincing to do, especially to me, that that is anything other than a softly, softly approach.
134. **Mr Simon Rogers:** The fine is an option for virtually all sentencing disposals, including manslaughter, etc, as it is in this case. Two cases on human trafficking have been prosecuted to conclusion in Northern Ireland. Both were in the Crown Court, and neither has had a fine; they both had custodial outcomes. The case that I mentioned earlier by Judge Burgess of the Crown against Pis sets out the starting points for sentencing. If x circumstances apply, we would normally expect a judge to sentence in the following way — x years. If the following aggravating factors are present, then it would be y years. It might be useful if I give the Committee Clerk access to that judgement for the benefit of members. The fundamental point for us is that we have put in a high tariff of 14 years against the directive's call for 10, and the judge has the discretion within that to sentence up to 14 years.
135. **Mr Anderson:** Why not a minimum sentence? The judge can decide up to 14 years, is that what you are telling me?
136. **Mr Simon Rogers:** Yes. The reason for that is that the Government are loath to set minimum tariffs across the front of sentencing, and I am sure that the judiciary would be even less happy if the Government were to do so. That is not the approach taken. The current approach is that we set a maximum tariff and the courts sentence within that. In this instance, there is the

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sentencing guideline base that sets out what the tariff should be for different types of case, up to the maximum.

137. **Mr Anderson:** I am not really convinced about going up to a maximum, quite honestly, Mr Rogers. It is anything from a small sentence to 14 years. It will be interesting to see how that is worked out or how it happens in cases. For this type of offence, I think that a minimum sentence certainly should be considered, partly because, as my colleague said, we all know about the particular case of young women being locked away in cells and what they had to put up with. It deserves that.
138. **The Chairperson:** I know that the judiciary may be loath to have a minimum sentence. That is fine; that can be its position. However, it should not dictate what the Department does. Politicians dictate the policy on this issue, not the judges. I appreciate its input, but I do not like an official relaying what the judiciary may think or may not think on this issue. It can articulate that for itself. If we decide contrary to that, it will be us who decide, and the Department will implement that decision, not because of what the judiciary may or may not want. Twice you have indicated what the judiciary will want, and that is fine, and I appreciate what it thinks, do not get me wrong. However, I do not want people coming forward speaking on behalf of the judiciary. It can do that for itself. I will leave it at that.
139. Simon, you are going to stay on for the next session. Thank you very much for the presentation. If members can agree, there were a couple of questions that we did not cover. We covered most of them, but those that we did not cover we will put in writing to the Department to deal with.





## 20 September 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Sydney Anderson  
 Mr Stewart Dickson  
 Mr Tom Elliott  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Jim Wells

### Witnesses:

Ms Dawn Harmon *Department of Justice*  
 Mr Simon Rogers  
 Detective Supt *Police Service of Northern Ireland*  
 Philip Marshall  
 Mr Mike Golden *UK Border Agency*

140. **The Chairperson:** I welcome Simon Rogers; the chair of the subgroup, PSNI Detective Superintendent Phil Marshall; Mike Golden from the UK Border Agency (UKBA), and Dawn Harmon of the community safety unit in the Department of Justice. I invite you to give us a brief outline, after which members will have some questions.
141. **Mr Simon Rogers (Department of Justice):** Thank you, Chair. I am sorry that you are hearing from me again. I will try to get through this so that you get to hear from my colleagues.
142. The background to this session is that the Department ran a consultation on the clauses that we have just discussed. That consultation brought responses on those clauses, but respondees also touched on other aspects of the EU directive as well as raising other, more general, human trafficking issues. The Department wrote to the Committee on 12 September, setting out the points raised about the directive. In that letter, we explained that we intended to address those in a paper to the Committee on compliance with the directive in general. The broader issues were set out in annex C to the 12 September paper. We explained that these had been referred to the immigration and human trafficking subgroup of the Organised Crime Task Force (OCTF). The Committee asked for an oral briefing, hence the officials and my colleagues are here today. All the organisations here — the police, UKBA and the community safety unit — are represented on that subgroup.
143. From the Organised Crime Task Force's '2012 Annual Report and Threat Assessment', members will be aware that organised immigration crime, including human trafficking, is one of our eight key threats. The OCTF subgroup on immigration and human trafficking was created in about 2007-8, following an operation and based on particular lessons that were learned from that operation. The subgroup provides a multi-agency partnership approach to tackling human trafficking in Northern Ireland. It brings the key groups together to seek to ensure a joined-up approach. However, different groups will take forward work in their own areas. For instance, the police will undertake operations and the Department will lead on legislation.
144. I will take this opportunity to set out briefly the range of initiatives that are either going on or have been going on across these various organisations. It is important to demonstrate what other issues we are pursuing with the aim of assisting victims, raising awareness and prosecuting offenders, in addition to the steps that we are taking on the directive. So, for example, proactive investigations are ongoing against crime by the police, liaising, as relevant, with an Garda Síochána. Training is taken forward across the front — UKBA, Public Prosecution Service (PPS), health and social care staff, police and others. For example, some 2,500 police officers and staff have been trained.

145. I have already mentioned the sentencing guideline judgements, and they are a significant factor to be considered. The PPS launched the consultation document that I highlighted and will send to the Committee. The Department introduced and funds a package of support for all adult victims of human trafficking who are recovered in Northern Ireland, which is a area that I have been asked about in particular. Dawn is in the unit that leads on this work. The funding amounts to £140,000 per annum and includes meeting the cost of safe and appropriate accommodation, help with victims' day-to-day living expenses, access to healthcare, counselling, legal advice and specialist services during the recovery and reflection period. It is delivered on the Department's behalf by Migrant Help and its delivery partner, Women's Aid.
146. Guidance on the working arrangements for the welfare and protection of child victims that was developed by the Department of Justice and the Health Department was published in February 2011. It sets out information for practitioners, agencies, etc, involved in this area. The Department, working with the Health Department, is developing a document in which we are writing to the Committee to set out working arrangements for the welfare and protection of adult victims of human trafficking. That is primarily directed at the police and the health and social care trusts.
147. Raising awareness is another area of importance, and we have run various campaigns to encourage people to use Crimestoppers. We have produced leaflets such as 'Visitor or Victim', which are displayed in various ports, railway stations, and so on. We are planning a training needs analysis that will draw up a training plan, and we have done consultation on engagement with non-governmental organisations and will send you a paper on that in October. We have mentioned the work on compliance with the directive, and we are about to start work on a multilingual leaflet for victims in conjunction with Amnesty International. We have an event planned for 18 October to mark Anti-Trafficking Day and Anti-Slavery Day, and I have invited Committee members to that. We have been working on the first annual report of the interdepartmental ministerial group. A major piece of research called Changing the Mindset has been conducted across all organised crime areas, including human trafficking, and, of course, we have the work on Lord Morrow's Bill and the various reports.
148. I thought that it was important to quickly rattle through those issues to try to put in context the level of work that we are trying to take forward, not only in the Department but in the other organisations, to tackle organised crime and, particularly, human trafficking.
149. **The Chairperson:** Thank you for that, Mr Rogers. I recognise that considerable work is going on. I recall Detective Marshall speaking about this issue before, and that commentary stuck with me. Since then, and taking on board the work that has been happening, how effective are the police now in detecting that problem and arresting people? How effective are the agencies in helping and supporting the victims?
150. **Detective Superintendent Philip Marshall (Police Service of Northern Ireland):** The landscape has changed within the past three years in the investigation of human trafficking in Northern Ireland, and that is because of the work of the OCTF and some of the work of the PSNI as a law enforcement agency. OCTF is bringing together the groups, and it is primarily an operational meeting in an operational context. We are able to share information across agencies. That can speed up the process and identify duplication, and we can gather the information for investigative purposes.
151. I am very pleased with the work of the PSNI and the subgroup in the area of raising awareness. We talk to the community, and more information is being reported to the police, and that is directly leading to the recovery of

- victims. Mr Rogers said that the online training programme has 2,500 police officers. The figure is now 2,800, and our percentage rate for the completion of that training is the highest of any police service in the United Kingdom. That programme has been driven by the subgroup. So, the landscape has changed in the past three years.
152. There are a number of ongoing investigations — I cannot get into the operational detail — that are focused on organised crime gangs involved in that type of crime, and the recent convictions in Northern Ireland of Matyas Pis and Rong Chen sent out a very strong signal that all parts of the criminal justice system are focused on that crime.
153. **The Chairperson:** Have those sentences been adequate?
154. **Detective Superintendent Marshall:** As a police officer, I cannot comment on sentences. Matyas Pis received three years on conviction. The judge said — and I am paraphrasing — that the level of offending was at the lower end of the scale, but he outlined that anybody who appears before the courts in Northern Ireland could expect to receive a custodial sentence. The second person who was convicted, Rong Chen, received a sentence of seven years. The trial judge will take factors into account in the context of a guilty plea, but that seven-year sentence was quite strong and sent out a very strong message. Other matters are still going through the criminal justice system, and it will be interesting to see the level of sentencing in those.
155. **The Chairperson:** When you identify the victims of this crime, is the level of support sufficient or is more needed?
156. **Ms Dawn Harmon (Department of Justice):** We closely monitor the contract that we have with the service provider and the subcontractor. That is done through a contract management group that reports to a human trafficking stakeholder group. We work with our contractors, as they do in turn with their subcontractors, on any ongoing problems that they might identify.
157. The contract was initially awarded for one year, with options to extend for a further two 12-month periods. In accordance with government procurement policy, there is a format for evaluating the contract after the first 12 months in order to avail ourselves of the first and second options. That was completed accordingly, and we awarded the contract for the second year on the basis that we were satisfied with it and with the feedback that we received from our PSNI colleagues.
158. Very shortly, we will embark on the evaluation of the second 12-month option. Thereafter, under procurement law, we will have to go out to tender, but at this moment we have very good co-operation with our service provider and the subcontractor.
159. **Detective Superintendent Marshall:** I will follow up on that, Chairperson. I sit on the national Association of Chief Police Officers regional representatives group on organised immigration crime and human trafficking. The structures in Northern Ireland, the level of co-operation across government agencies and the support networks for victims in Northern Ireland are looked on with envy by representatives from other parts of the United Kingdom.
160. **The Chairperson:** You will be aware of the EU directives on this issue that are coming forward and Lord Morrow's Bill. There has been a reasonable amount of discussion about prohibiting payment for sexual services in Northern Ireland. Does the group feel that that would be beneficial in tackling the problem?
161. **Mr Simon Rogers:** I hesitate to say anything about that at this stage, because we have not advised the Minister on Lord Morrow's Bill. It would be wrong for me to comment to the Committee on the Department of Justice's — that is, the Minister's — position.
162. I can say that we are looking at this matter closely and at the evidence highlighted by your researcher. It is clear

- from looking at the approach taken in Sweden, for example, that there are different views of that approach and we need to look at them. At this stage, until the Minister has had an opportunity to look at this, I would not want to set out a position.
163. **Detective Superintendent Marshall:** There is legislation available to law enforcement agencies at the moment that covers the purchase of sexual services from someone who has been subjected to exploitation. Our efforts to progress that legislation in Northern Ireland have proved to be problematic from an operational point of view. We are changing our focus across law enforcement in order to report things to the PPS at an earlier stage of investigations so that we can take forward those types of matters.
164. **The Chairperson:** Why has that been problematic?
165. **Detective Superintendent Marshall:** The view that we took in a certain investigation was that we should prove that the person was the subject of exploitation, and that that proof would have to be obtained in a court hearing. The court hearing did not take place within the six months from the commission of the offence, and the offence was statute-barred. We will now take the view that, when a decision is made within the national referral mechanism that someone is a potential victim of human trafficking at an earlier stage, we will initiate proceedings at that time.
166. I echo what Mr Rogers has said about Lord Morrow's Bill. It would probably be best not to comment directly on specific pieces of legislation. I have some concerns that we may be putting criminal liability on to a person who is seeking to sell sex, in that that person may be entering into a conspiracy or aiding and abetting the commission of a criminal offence. We need to think about what the impact of any such legislation would be.
167. **The Chairperson:** Has the PSNI taken a corporate view at this point on that aspect?
168. **Detective Superintendent Marshall:** I am charged with writing a response to the consultation document, which will be forwarded to the Department of Justice in due course.
169. **Mr Lynch:** I see that the Garda Síochána sits on your subgroup. What approaches and strategies have been adopted across the island of Ireland to combat this type of crime?
170. **Detective Superintendent Marshall:** We have very good liaison with colleagues in an Garda Síochána. A representative from the Garda Síochána national immigration bureau sits on the subgroup, which shares operational knowledge and information. I also liaise closely with colleagues in the organised crime branch around the investigation of prostitution.
171. Given that an Garda Síochána links into a number of NGOs in the Republic of Ireland, that is our link into those. I deal with groups like Ruhama in Dublin, which deals with women who are involved in prostitution. We work closely with it. Indeed, colleagues in an Garda Síochána and Ruhama provide joint training to gardaí and PSNI colleagues around the investigation of human trafficking.
172. **Mr Lynch:** Do you have all-Ireland statistics on charges, convictions and sentencing?
173. **Detective Superintendent Marshall:** No; certainly not in one document, Mr Lynch, but I have those figures available. They would be available from colleagues in the gardaí. There is no one set of figures published for the island of Ireland around the number of victims who are recovered, but the gardaí publishes an annual report that breaks down the number of victims by age, gender and exploitation type.
174. **Mr McCartney:** Is there a relationship between the prosecution services, North and South, in how to take cases forward and in lessons learnt? How is that

- ascertained? Is it through the PPS, or is it part of the wider group?
175. **Mr Simon Rogers:** The PPS is on the subgroup. The equivalent body in the South is not. However, there would be liaison between the two in the same way that one of the cases is being prosecuted in Scotland, where certain evidence was found here and the decision was made between the two prosecution services that the case should be proceeded with in Scotland rather than here. There is liaison as necessary —
176. **Mr McCartney:** And it is done through the two groups rather than through the wider —
177. **Mr Simon Rogers:** Those are individual decisions on individual cases, so they would not be dealt with on the subgroup.
178. **Mr Wells:** Obviously, the traffic is cross-border. Is there evidence to indicate where the victims are coming into the island of Ireland? Are they coming into the Republic and then being trafficked into Northern Ireland? Are they being brought across from Scotland or Heathrow or whatever? Do we know the point of entry for a lot of those extremely unfortunate individuals?
179. **Detective Superintendent Marshall:** The truthful answer, Mr Wells, is that we do not know. Trafficking, by its very nature, is a very hidden crime. We know what we know from the 81 victims who have been recovered over the past three years about their points of entry. Certainly, based on experience, the airports are the major way in, and then the ferry ports, as we would expect. We have seen UK victims being trafficked to Scotland and then into Northern Ireland by air and boat. We have seen victims coming into Dublin Airport and then being moved by car or public transport into Northern Ireland and other parts of the United Kingdom.
180. We have to remember that when we are dealing with human trafficking, you do not have to cross an international border; you can be as easily trafficked internally within your own country. The distance that you travel is immaterial.
181. **Mr Wells:** According to the study in which I am involved, the vast majority of those people have, at some stage, been shipped in from the Far East, eastern Europe or the Balkans. Those are the main routes in, as, sometimes, is western Africa. Although there is no doubt that it goes on internally, those people often do not know what country they are in. It is an absolute nightmare when you think about what they must go through: they have been promised a hairdressing job or a cookery job or whatever, they arrive and they are locked into a room for forced prostitution. It is an unimaginably painful issue.
182. You outlined the two cases in which you successfully secured a conviction, which is good news. Without revealing too much, can you tell us how much is in the pipeline in terms of people who have been brought up to courts and charged for trafficking? Do we know whether there is a major move to get people before the courts on this issue?
183. **Detective Superintendent Marshall:** In any investigations that I am leading on, Mr Wells, there is a drive to put people before the courts so that they can face justice. There are a number of ongoing investigations. I think that the PPS is considering charges on three cases, and those have reached the preliminary enquiry stage. More cases are coming through the pipeline of the criminal justice system.
184. **Mr Wells:** Do you have any contact with the agency that is allowing this to happen, which is the Foreign Office? Our evidence is that the vast majority of those people are legal. At some stage, they have had a legal document. I am certain that, by the time that you find them, the document has long disappeared into their minder's hands, but surely there has to be liaison between your group and the people who are granting the visas to allow those people to come in. None of them has a visa to come in and be trafficked; they have a visa for a totally legitimate

profession. I would have thought that the trends are so clear that someone in Croydon who is granting these visas would start to spot a clear tendency of a lot of people applying from one country to be a certain profession, and try to cut it off at that stage. Is anyone thinking outside the box to try to stop that happening?

185. **Mr Mike Golden (UK Border Agency):**

Mr Wells, I represent the UK Border Agency, and, of course, we partner the UK Border Force, which protects our borders. I listened to what you said in the first session about people coming through Ireland. It is not complacency, but, to give you some assurance that we are moving forward all the time on this, the introduction of the national referral mechanism has brought the agencies together and gives us a lot more intelligence about what is cropping up in terms of countries and modi operandi and about how people are getting into the UK or even, indeed, Ireland.

186. It is not so much down to the people in Croydon. There are two challenges for the UK Border Agency and the UK Border Force. This is where our strategy goes. The first is to take action at the border and prevent people from coming in who can be trafficked, and, obviously, identify the traffickers. The second is to have an effective mechanism to give support and advice to people who have been victims of trafficking when we encounter and identify them in-country. On the issue of the border, for many countries, it is not Croydon but overseas where the visas are processed, allowing people to come through to the UK. We have a national profiling system, and we notify trends, such as Vietnam or Nigeria, which are high-risk countries in those terms. We work with the source countries and their officials to advise them overseas that there are high instances of traffickers being encountered. In the context of Northern Ireland, we also work with the European hubs, because people are not flying directly from west Africa, but to, for example, Spain or Holland. We also liaise with the Irish authorities to try to ensure that those responsible for the

whole border of Northern Ireland and Southern Ireland are aware of and have intelligence on the things to look out for. That has been increasingly effective since the introduction of the national referral model.

187. What we also have to do — and this is the difficult bit. You are right to say that victims of trafficking can come into the country legally. Our UK Border Force officers who work at the border and see people coming off a plane, whether from Europe or wherever, have all been highly trained to look out for the indicators of trafficking, and there are many of those. You can imagine some of them: nervousness, not being able to look at you, not being comfortable with who they are with, coming from a country in which we know trafficking can be quite a prominent thing.

188. We are not ineffective at the border, but it is a difficulty and a challenge that people come here with a work visa or a student visa and expect to land where they land and take up their job or student visa. They expect that right through the control point, if you like, at the border. Perhaps someone will have told them that they have set it all up for up them so that everything will be fine when they are there. In fact, they are duped. Especially at international airports, a lot of indicators do not apply. People are not showing signs of nervousness or indicators that they are being trafficked. At that point, as far as they are concerned, they have not been. The fine line is between facilitation and trafficking. As we know, facilitation refers to people who have paid, perhaps, \$10,000 to get into the UK with a facilitator, thinking that they are going to have a good economic life, based on what they promised them. That is illegal, but they will not be nervous and upset about it when they arrive at the border point. It is difficult, because people do arrive on legal visas and get through, and the trouble starts for those people when they are actually in the country. They are duped into where they will be living and into whatever terrible type of trafficking that they have been victim

- to. That is where the police come in, and that is where other intelligence comes in. So it is quite difficult, but we have better intelligence now, and UK Border Force staff are highly trained so that even if a person is quite content, there are lots of other indicators in parts of their journey into the country that they will take into account at the border. Internally, the job of the UK Border Agency is to make that national referral model work, so that people who are presented or found to be victims of trafficking can be got through the system with support, advice and as little hassle as possible.
189. We make the important decisions as to whether a person is a victim of trafficking. So we are the competent authority — the UK Border Agency in partnership with the UK Human Trafficking Centre — to decide whether a person has been trafficked, and whether they should be allowed to stay longer in the country to help the police to get to the organised crime or criminals behind that. So it is a very difficult area.
190. **Ms McCorley:** Go raibh maith agat, a Cathaoirleach. Do you feel that the current level of services, access to legal aid and support for victims is sufficient?
191. **Mr Golden:** I cannot really comment on that. What I can say is that the partnership that we have — as the UK Border Agency builds on its presence in Northern Ireland and becomes more responsive to these issues — has no serious issues with the joined-upness of the services at this point. There are not a high number of referrals coming to the UK Border Agency in Northern Ireland. Overall, including European, UK, and non-European referrals in 2011, some 32 came through the UK Human Trafficking Centre.
192. Detective Superintendent Marshall: The level of support that is provided under the contract, through the Department, by Migrant Help and Women's Aid, from an operational level, provides a very good service. For example, if I enter a brothel location and recover a victim of human trafficking, Migrant Help will be there within the hour to provide that assistance, or, as they say, to provide a shoulder to cry on. They assist all the partners in the Organised Crime Task Force on that issue. I have no problems with those organisations at all.
193. **Ms Harmon:** That service kicks in straight away, despite the fact that, technically speaking, they are only responsible once the victim has received the “reasonable grounds” decision that he or she is a potential victim of human trafficking. However, these people are not left to fend for themselves. The service provider is in there at the beginning and, from the point of view of managing the contract, it will be retrospectively backdated to the time of a raid. The service provider is usually on the scene at the time of a raid or when we have initially gone in, so there is no delay. The service provider is there with a shoulder to cry on and interpreters. They will provide safe accommodation. Risk assessments are done on that. The front line staff are highly trained, at least to Office of the Immigration Services Commissioner level 1, which is quite a high standard of qualification. They will help the victim. They will provide clothes and — depending upon what time of day it is — a welcome meal, toiletries and basic needs for the victim, together with as much support as they can give at that traumatic time.
194. **Ms McCorley:** Does that support continue?
195. **Ms Harmon:** The support continues under the contract until the victim receives the “conclusive grounds” decision, which comes from the competent authority which, as Mike said, is the UKBA.
196. It can take some time to move from the day that the competent authority gives that “conclusive grounds” decision until the victim becomes eligible for social support and benefits. However, the contractors will keep providing the service until such times as the victim receives benefits and is eligible for everything that they can provide in the country. Again, we will pay them and

- reimburse them up to that stage, when they are eligible for resources.
197. **Mr Dickson:** I want to continue on the work that the UK Border Agency is doing and the need for you to have appropriate and shared intelligence. Presumably, when somebody presents themselves at a border point in Northern Ireland with, for example, a student visa, pre-checks are done or are available to you in respect of our universities and colleges, because if people are coming in from outside the EU, you will need that information. If they are coming to work for an employer, they will need to know the name and address of the employer. I take it that all those things are checked pre, during or post somebody coming through a border point.
198. **Mr Golden:** Yes, under the points-based system, the colleges, universities and employers have to sponsor people to come to work. So, the person who arrives will have to have a visa, we will have to know where they are going, the conditions under which they are coming and who their sponsor is. Our systems do those checks before they cross the border. The points-based system can be bucked, if it is organised enough, because it is organised criminals who are behind this. Even then, even if somebody is turning up happy and thinking that they are going to a university, etc, our intelligence and border officials will ask questions if they know it is a high-risk kind of situation or country. Even if they get the answers right, you know, you are talking about a victim of trafficking. There are indicators that it is rehearsed, or that they are relying on the person with them to answer the questions, or most of the questions, for them. Our staff are skilled in exploring cases. I am not saying that we are always perfect. We cannot be, because we find victims of trafficking here, but we are getting better.
199. Our work with the Irish authorities is very close. The thing that hit the papers yesterday — the case that Phil talked about — was a good example of that. That chap had three years, but we deported him back to Hungary on Tuesday. We were working with the police and the prison authorities so that nothing could slip. When that man came out of prison, we were there to put him back to his country. We also got intelligence out to the European countries to say that we did not want the chap to try to get back to the UK. Our own warning systems will not let that man back into the UK. We have warned our colleagues in Ireland about it, and their systems know that we do not want this man. We have closed the net, I would say, on that man and, typically, other people like him, getting back into Northern Ireland or other parts of the UK.
200. **Mr Dickson:** That shows the immense value of the intelligence and joined-up work between you and external organisations and between you and all the other players in the area. Given the imminent demise of the Serious and Organised Crime Agency and the introduction of the new organisation, the National Crime Agency (NCA), can we be assured that we will be delivered a seamless transfer from one organisation to the other?
201. **Mr Simon Rogers:** We have been to the Committee already on the work of the National Crime Agency, and we have secured approval to work towards a legislative consent motion. That is before the Executive at the minute. Obviously, assuming that that proceeds, there is no doubt that we want a seamless transition from one organisation to another.
202. **Mr Dickson:** Clearly, it is important that there is no chink in the armour with regard to intelligence, the work of the UK Border Agency and the work of the PSNI. That has to be an iron curtain, if you like, and a very difficult broad border to get this heinous crime through.
203. **Detective Superintendent Marshall:** When you talk about the Serious and Organised Crime Agency, one of the key factors is that the UK Human Trafficking Centre is part of that organisation. From a law enforcement point of view, it is the link into the wider European law enforcement family. We regularly



- share intelligence and information with Europol. If I have an alert and a piece of information within an investigation in Northern Ireland, that is alerted across Europe via the human trafficking centre. Just last week, I talked to colleagues in the human trafficking centre about what will happen when the NCA comes into being. They do not see a change in the service that is provided to Northern Ireland. They are very keen that it will be business as usual and that there will be a seamless transition.
204. **Mr Dickson:** So, we can be assured that those people will still be in place and that the NCA will have a similar, if not identical, organisation?
205. **Detective Superintendent Marshall:** Yes, it will provide exactly the same service.
206. **Mr Anderson:** In investigation and prosecution terms, have you found a problem with the victims coming forward with information? Do they drop out of the situation? Can you get the information from them?
207. **Detective Superintendent Marshall:** Historically, in law enforcement, seeking the support of the victims of human trafficking was a difficulty. Over the past number of years, because of some training we have put in place, we have secured the support of some victims. In the case of Rong Chen, it took three years to get a successful conclusion, and the witnesses/victims in that case stayed with law enforcement the whole way and were very supportive.
208. One of the issues when you talk about human trafficking is that for victims to be referred to the national referral mechanism, we need their support. They physically have to sign the form to enter into that system. With the control factors that the traffickers have over the victims, that can prove problematic, and on some occasions, we have recovered people in Northern Ireland who we, as law enforcement, believe to be victims of human trafficking but who will not self-declare that. Those people are lost in the system as an official figure. They will want to return to their country of origin.
209. We try very hard to secure the support of the victims. We reinforce, in the initial discussions, the protection measures that law enforcement can bring to a victim throughout the criminal justice system. There are victims who have been recovered in Northern Ireland who have entered the witness protection scheme and been provided with special protection at the court cases. That is something that we concentrate on to secure the support of victims. That is reinforced by Migrant Help and Women's Aid, which can provide additional support.
210. **Mr Anderson:** You talk about entering the protection scheme. Is there any evidence about who is operating the criminal gangs involved? Is there any paramilitary involvement, in any way?
211. **Detective Superintendent Marshall:** The investigations in Northern Ireland that I have been involved in have involved European crime gangs working with Northern Ireland crime gangs. Some of those individuals have had historic links to paramilitary groups.
212. **The Chairperson:** In how many cases do you find that you believe that someone is the victim of human trafficking but that person will not self-declare?
213. **Detective Superintendent Marshall:** That is hard to quantify. Not having the hard data, I will refer to what the national statistics say. In 2011, a baseline assessment was carried out by the Human Trafficking Centre. Approximately 940 individuals were referred to the national referral mechanism, which is a conglomeration of the figures for the UK as a whole. The baseline assessment was that the true figure was in and around 2,070, so less than 50% of the people encountered end up being referred to the national referral mechanism. It is safe to say that the position would be similar in Northern Ireland.
214. **The Chairperson:** So, there is no mechanism where, potentially one in two cases — unless they self-declare that, you are not able to pursue that if you have the evidence, even though the

- victim is not declaring that they believe they are subject to it.
215. **Detective Superintendent Marshall:** No. The position is that the victim has to self-declare to enter the national referral mechanism. As a police officer, I am bound by section 32 of the Police (Northern Ireland) Act 2000. So, if I think that an offence has been committed, I have a duty and an obligation to investigate. Not having a witness may cause you difficulties when you are progressing that investigation, but we are still obligated and we still carry out investigations.
216. **The Chairperson:** I understand better now.
217. Finally, where does Northern Ireland rank in the level of concern, compared with everywhere else in the United Kingdom? Is Northern Ireland at the top of the scale and seen as a conduit for trafficking to the rest of the UK? Where are we in the level of concern?
218. **Mr Golden:** In population, Northern Ireland is not way up there, proportionately, with the other three countries. London is the biggest concern in the UK; it and the north-east are where the highest number and the highest identification figures are. In Northern Ireland, the numbers are smaller. However, it is no less of a priority for the UK Border Agency and the authorities to protect people from those crimes.
219. **The Chairperson:** So you do not look at Northern Ireland and think that we have got the Irish Republic and, therefore, we are a channel for people who come in initially to the Republic and up into Northern Ireland and then onwards? Is that not something that presents particular concern?
220. **Detective Superintendent Marshall:** No. When I look at the national referral mechanism figures for the UK as a whole, the percentages from Northern Ireland against the population of Northern Ireland are comparable to those in England, Scotland and Wales. We have a slightly different picture in Northern Ireland when we talk about one particular type of exploitation, which is sexual exploitation, because the prostitution market in Northern Ireland, and Ireland as a whole, is different from what it is in England, where it is more on-street based. Here it is off-street prostitution, which has a different dynamic, which then may lead to victims being trafficked for that purpose.
221. I heard a reference to the Swedish model earlier. Some of the figures coming out of the Swedish model show that it was addressing on-street prostitution. On-street prostitution in Northern Ireland is very limited, and we have to be careful to compare apples with apples and not apples with pears.
222. **The Chairperson:** That has been very useful. Thank you very much.

## 27 September 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Sydney Anderson  
 Mr Stewart Dickson  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Peter Weir  
 Mr Jim Wells

### Witnesses:

Mr Gary Dodds *Department of Justice*  
 Mr David Hughes  
 Mr Gareth Johnston  
 Mr Ian Kerr  
 Ms Amanda Patterson

223. **The Chairperson:** I welcome Gareth Johnston and Amanda Patterson from the criminal justice policy and legislative division, who will take us through this. This session will be recorded by Hansard. Mr Johnston, can I hand over to you?
224. **Mr Gareth Johnston (Department of Justice):** I will ask Amanda to take us through the individual clauses; I can come in with some general comments if need be.
225. **Ms Amanda Patterson (Department of Justice):** Clause 1 and schedule 1 make changes to the current legislation set out in the Sexual Offences Act 2003, which requires offenders who have been convicted of a sexual offence to be subject to notification requirements for a specified period depending on the seriousness of the offence, as measured by the length of the sentence. By way of background, a person who has been sentenced to imprisonment for a period of 30 months or more is required to notify for an indefinite period. That means that they have to provide the police with details of their identity and whereabouts and update that information regularly. In 2010, the Supreme Court found that such a requirement with no recourse to have it lifted or removed was contrary to article 8 of the European Convention on Human Rights. All jurisdictions in the UK have since moved to address that point. Scotland did so by remedial order in 2010 and England and Wales by remedial order in July of this year.
226. Clause 1 inserts an amendment to the 2003 Act that allows for the review and discharge of indefinite notification requirements and inserts a schedule to the Act detailing the application procedure that offenders would go through to apply for a review of the notification requirements if they are subject to that notification for an indefinite period. Schedule 1 inserts the legislative framework for making applications. It might be easier if we go through schedule 1 now.
227. **The Chairperson:** Members, that is in your Bill folder.
228. **Ms Patterson:** Paragraph 1 of schedule 1 defines whom the schedule applies to and provides definitions of the terminology used in the schedule.
229. Paragraph 2, "Initial review: applications", sets out how exactly the application process will work. An offender may apply to the Chief Constable after an initial review period. That review period is 15 years from the date of initial notification or eight years if the person was under 18 at the time of conviction. It also explains that the date of initial notification is three days after conviction. It disregards any period spent in custody after that. Therefore, an application can be made by an offender only 15 years after release from a prison sentence for the relevant offence.
230. Paragraph 2 also excludes from eligibility to apply those who are already subject to a sexual offences prevention order

- (SOPO) or those who may have a further conviction that attaches a fixed period of notification that is still outstanding. Therefore, the only offenders who can apply are those who have indefinite notification for a particular offence and who are not subject to a SOPO, which indicates that the person is at a high level of risk and requires a SOPO to manage that risk. It also ensures that, where an offender has more than one conviction attracting indefinite notification, the review period will start and be calculated only from the most recent of those convictions.
231. Finally, the paragraph sets out that the application must be in writing and what it must contain. The Chief Constable then has to acknowledge receipt of that application within 14 days. There is also provision for him to request information from any other appropriate source before determining an application.
232. Paragraph 3 sets out the benchmark for determining an application. Where the Chief Constable satisfies himself that an offender poses a risk of sexual harm and the risk justifies the continuance of notification, the requirements will not be discharged. Paragraph 3 is quite lengthy, and I do not intend to go into it in detail other than to say that it sets out the various criteria that the Chief Constable must take into account when considering an application. Fourteen specific criteria are listed at paragraph 2(2)(a) to (n). The end of that paragraph requires the Chief Constable not to delegate the functions of determination to anyone below the level of superintendent.
233. Paragraph 4 requires the Chief Constable to reach a decision and serve notice on an applicant within a 12-week period of receipt of the application.
234. Paragraph 5 is the initial review and the application to court. That provides a right for the offender to apply to the Crown Court if the Chief Constable decides either not to discharge the requirements or does not respond within the statutory 12-week period. An application to the court must be made within 21 days, and the court has to determine the outcome on the same basis as the police; in other words, another application to the court. If the application is unsuccessful, paragraph 6 allows for further applications to be made by the offender eight years after the outcome of the initial review. That is cut to four years in the case of a person who was under the age of 18 at the time of conviction for the relevant offence.
235. Paragraph 7 requires the Department to issue guidance on the making of applications and the determination of applications by the Chief Constable. The last paragraph, paragraph 8, gives jurisdiction in Northern Ireland to decisions made by the rest of the UK: England, Wales and Scotland. That is clause 1 and schedule 1 covered, which is the review of indefinite offender notification requirements. Shall I move on to the other clauses before answering questions?
236. **The Chairperson:** If we could perhaps deal with this area first before moving to the next clauses. We will run through those paragraphs, and if members have questions, they can ask them. This will be familiar to members who were here in the previous mandate; however, those of you who are not familiar with it please feel free to ask questions.
237. **Mr Weir:** I was going to ask a generic question that does not relate to a specific paragraph. I appreciate that some members may have been here in the previous mandate, and that there was some controversy around this then, but there is also an acceptance that, legally, there is limited room for manoeuvre on it. As England, Scotland and Wales are also having to put in place similar arrangements, I wonder whether you could highlight any differences. Those jurisdictions face the same dilemma about how to square the circle on this. There may be variations between ourselves and other jurisdictions; whether in some case we may be taking a tougher approach or a less tough approach. There is good co-operation between the various police forces across the islands in connection

- with this. If you were to talk to people who have been victims, particularly of sexual abuse, they will say that one of the concerns in the past was about people trying to take advantage of shifting across jurisdictions because of the extent to which they were monitored. Will you outline where we have diverged from the path? It may be a tougher path than that taken in other jurisdictions.
238. **Ms Patterson:** There are not many differences; the major aspects are the same. The review period is the same; it is 15 years in all jurisdictions. The court process is slightly different in the three jurisdictions. In Scotland it goes to the Sheriff's Court; England and Wales have inserted an appeal to the magistrates' court; here, we have chosen a Crown Court route. Other differences are really not huge.
239. The Scottish system is slightly more "liberal", if you must use that term, in that the review takes place despite an application. The offender does not have to apply; it is for the police in Scotland to make an application for a continuation order. If they do not do that, or if they are unsuccessful, the notification requirements will cease after the 15-year period. However, our proposals, and England and Wales in their remedial order, have chosen the offender approach, whereby the offender has to make an application, and the notification requirements will continue until such time as a determination has been made.
240. **Mr Weir:** One of the key grounds that the Chief Constable has to take into account is the assessment of the risk of sexual harm. The agencies involved are mentioned in article 49(1) of the Criminal Justice (Northern Ireland) Order 2008. Are those assessments made automatically? Is there not a question of having to go out to those agencies; will they automatically make that assessment? What is the process there?
241. **Ms Patterson:** That would probably be covered by the guidance on who the agencies are that meet, assess and manage risk under what we call public protection arrangements. Where a case has recently been looked at by a local area public protection panel, which is formed by representatives of those agencies, that might do as an assessment of the risk at that particular time. However, I think that, in most cases, it is more likely to be a special case, where they will look at the case before they make a determination.
242. **Mr Weir:** I appreciate that it will be covered by the guidance. It will mean that, in every case in which there is an application, assessments will have been made. I am conscious of the fact that we should not get into a controversial situation, a few years down the line, whereby the notification has been changed and it is then found that the right hand did not know what the left was doing, and assessment was not on that. Will that be well tied up?
243. **Ms Patterson:** That will be very well tied up. Some of the cases will undoubtedly be those at the lower level of risk, which may not have been in the risk-management process. Those cases will have to come forward and be looked at again.
244. **Mr Weir:** Thank you.
245. **The Chairperson:** There are a couple of points that I want to ask about applications. If you are under the age of 18, it is eight years. Is it the same in England? And if you are an adult, it is 15 years; is that the same as in England?
246. **Ms Patterson:** Yes.
247. **The Chairperson:** As to the further reviews, for those aged under 18, there will be a further review every four years; and for adults, there will be a further review every eight years. Is that the same as in England?
248. **Ms Patterson:** It is not quite the same: I was just about to come to that. In England, Wales and Scotland, the police can extend the eight-year period to a maximum of 15 years. The police here were not keen on following that route, because they reckoned that eight years

- is a long time. They could not see any reason why they would want to extend that second review to a period beyond eight years. It also caused difficulty here because, if it were to go into the appeal process and there was a judicial review of the length of time that the police were giving for an extension, it would cause all sorts of difficulties. It would be a natural thing that everyone would go to court to challenge it. Therefore the police were happy with an eight-year gap between the first and second review.
249. **The Chairperson:** Therefore it is eight years in England and Scotland, but they can extend that?
250. **Ms Patterson:** They can, in exceptional circumstances, if they feel that they need to.
251. **The Chairperson:** Therefore they just have an additional element that says, “It will be eight years but —”
252. **Ms Patterson:** In exceptional circumstances that period could be extended. The Chief Constable would have to make a case for those exceptional circumstances. Therefore it was not considered to be a very useful aspect.
253. **Mr Johnston:** I think that we feel that, in England, they will probably face plenty of judicial reviews on that point, and, to be honest, it ends up being more bother than it is worth.
254. **The Chairperson:** The Chief Constable performs his role first. It is the police who make that initial decision, and then you can go to the Crown Court; or, if the police do not do it within the time frame, you can automatically go to the Crown Court.
255. Is that the same procedure as in England and Scotland? Initially, I think that the Home Secretary said that it would only be by way of judicial review.
256. **Ms Patterson:** No.
257. **The Chairperson:** Have they changed that?
258. **Ms Patterson:** They had to change it as a result of the report of the Joint Committee on Human Rights. They reckoned that it would not be compliant if there was not some form of independent tribunal involved. Therefore they have inserted the provision to allow for an appeal to a magistrates’ court.
259. **The Chairperson:** OK. My last point relates to paragraph 8 of schedule 1, “Discharge in Great Britain”. If all the laws are the same, you will be discharged wherever you are; if you are discharged in England, it will apply here.
260. **Ms Patterson:** Yes.
261. **The Chairperson:** I take it that that applies only where the legislation is identical; if there is any variance — or perhaps there is no variance at all. What I am worried about is where you are discharged in another jurisdiction in the United Kingdom, and the law that we pass is stricter, that discharge may not apply in Northern Ireland. I just want to be sure that we do not let someone off here, once we pass a law, because somewhere else’s law is not up to the same rigorous standard as ours.
262. **Ms Patterson:** It depends on what is passed in Northern Ireland, but, at the minute, the provisions and the proposals in the Bill would not cause that problem, because even though there are slight differences on the edges, the basic, fundamental tenets are the same. The criteria by which the police determine whether there is still a risk are the same in all the jurisdictions. Fundamentally, that is what will decide whether or not risk is still present.
263. **Mr McCartney:** Thank you very much for your presentation. What are the main changes from the previous Bill?
264. **Ms Patterson:** That is a good question. What have we changed?
265. **Mr McCartney:** Substantially, there do not seem to be many.
266. **Ms Patterson:** There are not many. I am sorry; I am struggling on that one.
267. **Mr McCartney:** That means that I do not have to ask any more questions. I can refer to your answers in the past.

- [Laughter.] There is not really any great change from the previous proposition.
268. **Ms Patterson:** There is not.
269. **Mr Johnston:** There are some specific issues around people whose convictions were in other countries and automatic notification.
270. **Ms Patterson:** That is not in this. I am just talking about the review mechanism.
271. **Mr McCartney:** That is fine. There are no substantial differences in taking this through, so the issues that the Committee raised previously have been well ventilated.
272. **Ms Patterson:** More or less.
273. **Mr Johnston:** What has changed in the meantime is not so much what is in this clause; it is, rather, that England and Wales have come closer to our position.
274. **The Chairperson:** I would find it useful if you were to give us a paper detailing any changes from the previous Bill and giving an analysis of what we are doing compared with what England and Scotland have done. That would be helpful.
275. **Ms Patterson:** That is not a problem.
276. **The Chairperson:** Previously, when we looked at the Bill, England was talking about judicial review, and that led us to be reticent. If that was the route that England was going down, we wondered whether we should fall into line. If we could have those two pieces of work, that would be helpful for the Committee in trying to deal with this. Take us through the other clauses, please.
277. **Ms Patterson:** Clause 2 is entitled “Ending notification requirements for acts which are no longer offences”. That is, basically, a consequential amendment as a result of the Sexual Offences (Northern Ireland) Order 2008, which should really have been done at the time but which was not. It left the law a little behind what it should be. Yet again, it amends the Sexual Offences Act 2003 to expand the scope of schedule 4 to that Act to include offences that have been abolished since that Act was made. It does not change any real policy; it just changes the offences that should be included in this. It means that offenders who have notification attached only by offences that have since been abolished can apply to have their notification requirements removed. The original abolished offences in the Act include section 61 of the Offences against the Person Act 1861, covering buggery; and section 11 of the Criminal Law Amendment Act 1885, covering indecency between men, where the other party was over the age of 17. The Bill would add in article 19 of the Criminal Justice (Northern Ireland) Order 2003, again covering buggery; and section 5 of the Criminal Law Amendment Act 1885, covering carnal knowledge of a girl under 17. The offences that would be included are consensual offences where the other party was aged 16 or over as opposed to 17 or over. That is a consequence of replacing those offences, which involve a repeal now in the Sexual Offences (Northern Ireland) Order 2008, with offences relating to sexual activity with a person under the age of 16 rather than 17.
278. The clause also expands the provisions by allowing applications where the offender was convicted or sentenced for the above offences on the basis that he honestly believed that the other party was aged 16 or over but, in fact, was under 16.
279. Clause 3 deals with offences committed in a European Economic Area (EEA) state other than the United Kingdom. It would, again, amend the Sexual Offences Act 2003 to change the way in which notification requirements are attached to offenders with convictions from outside the United Kingdom. The clause makes it a statutory requirement for offenders who come to Northern Ireland with convictions for sexual offences in another EEA country to notify the police of their personal details in the same way as domestic offenders do. However, offenders from

- other countries would still be exempt from that statutory requirement until such times as the police would apply and obtain a court order known as a notification order, which is the current arrangement. However, when the Bill was with the Executive, there was some concern about the clause, and they would not agree to introduce the Bill on that basis without a commitment that an amendment would be brought forward to create an acceptable single enhanced process for attaching notification for all sex offenders with convictions from outside the UK. As a result, the policy is under review again, and the Department will need to have further discussions with stakeholders to find another suitable way forward. At that point, we would envisage coming to the Committee with revised proposals.
280. **The Chairperson:** The police raised a point about identifying people within the three-day notification period. How would they identify such people, and how can that be enforced?
281. **Ms Patterson:** Basically, it cannot and will not be enforced. In practical terms, it would mean that when the police discover that a person from another country who has sexual offence convictions is in Northern Ireland, they can go to that person and immediately make them subject to the notification requirements without the need to make a case and apply to the court, given the length of time that that takes. There is not really any way of ensuring that somebody who comes to Northern Ireland from a country outside the UK knows about that when they arrive. The police's view is quite pragmatic. They see the benefit of it because they can, where necessary, make sure that a person either agrees, becomes subject to notification and makes his notification immediately, or is arrested for breaching the requirement.
282. **The Chairperson:** Unless it is flagged up when they come into the country.
283. **Ms Patterson:** Unless it is flagged up in some other way. For example, it will be of benefit in the Republic of Ireland, because there will be joint arrangements whereby offenders coming out of prison in Ireland will be informed at that point that if they travel across the border to Northern Ireland, they will be obliged to notify the police. Therefore they will know that if they stay here for a period of seven days, they will have three days to notify the police. If someone from the Republic of Ireland came here without notifying the police of their personal details, they would be in breach and would be found immediately.
284. **Mr Johnston:** Of course, there are, in any event, quite good arrangements for information exchange between the two police services in cases where somebody who is being released does not pose any kind of risk.
285. **The Chairperson:** The Public Prosecution Service (PPS) has highlighted that this element of the Bill already exists in Part 2 of the Sexual Offences Act 2003 and that it has already been applied in Scotland, under the section on powers of entry to and examination of relevant offender's home address in the Justice (Scotland) Act 2006.
286. **Ms Patterson:** I do not think that that is correct.
287. **The Chairperson:** I will take your word for it.
288. **Ms Patterson:** I am not sure what that is, but I do not think that it is correct. That would be new.
289. **The Chairperson:** OK. We will look at the PPS response in more detail. It did flag that up with the Committee. We will look at that more, and if there is something that we need to get some clarity on, we will write to you.
290. **Ms Patterson:** Clause 4 is entitled, "Sexual offences prevention orders", and is quite straightforward. It simply explains the scope of sexual offences prevention orders to allow the court to require an offender to do something as well as prohibit them from engaging in certain activities. It allows positive conditions to be added into the SOPO if the court is agreeable to that. That will



- add to the effectiveness of the order as a risk-management tool and allow the order to be more readily understood by the offender, which, in turn, may reduce the number of breaches due to misunderstandings of how they have to be written. At the minute, you cannot tell an offender to do something. That is a straightforward measure that is already in operation in Scotland, although they do not have it yet in England and Wales.
291. **Mr Johnston:** Coming back to the PPS point, there is a very straightforward point to note about the structure of the legislation rather than the content. Our Bill inserts section 96A. However, there is already a section 96A inserted by another piece of legislation about something completely different, but it only applies to Scotland. So, it is just a question of whether ours needs to be 96B rather than 96A. It is a straightforward point that we will check with the lawyers.
292. **The Chairperson:** Thank you very much.
293. We now move on to the DNA/fingerprint retention clauses. I welcome David Hughes, deputy director of policing policy and strategy division, and Ian Kerr and Gary Dodds from police powers and custody branch. This session will be covered by Hansard, and members will have an opportunity to ask some questions once we have had a briefing from Mr Hughes.
294. **Mr David Hughes (Department of Justice):** I do not need to rehearse too much by way of background. Members will recall the substance of these provisions, which are to be incorporated into the Police and Criminal Evidence (Northern Ireland) Order 1989 in response to the judgement of the European Court of Human Rights in the case of *S and Marper v UK*. Following that judgement, in Northern Ireland and in England and Wales there is a requirement to change the retention framework. The UK Government adopted the protections afforded by the existing Scottish model and legislated for its own framework based on that. Those provisions are set out in the Protection of Freedoms Act 2012.
295. These clauses would introduce the substance of the changes to the PACE Order through the schedules. With your permission, we will be able to cover the clauses quite quickly. The new clauses that are being inserted into the PACE Order contain the bulk of the material.
296. Clause 7 gives effect to schedules 2 and 3, which insert the new retention framework and make consequential amendments. It also requires the Department to make an order containing transitional or saving provisions associated with the coming into force of that clause and the repeals in schedule 4. It specifically requires the Department, in the exercise of that order-making power, to provide for the destruction or retention as appropriate of biometric material taken before the coming into operation of the new framework. That is to say, the order will apply the new criteria for retention to legacy material, effectively clearing the current database in line with the new rules.
297. Clause 8 gives effect to the appeals in schedule 4, Part 2 of which relates to DNA and fingerprints.
298. Clause 9 allows the Department to schedule commencement of the provisions of the Bill that do not come into force on assent.
299. If the Committee is content, I will move on to schedule 2 to the Bill and its substance. Article 63B sets out the basic rules governing the destruction of fingerprints and DNA profiles taken from a person either under the powers in Part 6 of PACE or with the consent of the person in connection with the investigation of an offence. For example, someone might choose to do so to eliminate themselves from an inquiry. This material, which is referred to throughout as article 63B material, must be destroyed unless one or more of the provisions in article 63C to 63J apply, in which case the article that delivers the longest retention period determines the

maximum period for which the material may be held. The Chief Constable is required to destroy 63B material if it appears that the material was taken or derived unlawfully or if the arrest of the person was unlawful or based on mistaken identity. However, on the recommendation of the Attorney General, that is made subordinate to article 63C. If the material is of potential evidential value, it may be retained until the conclusion of any investigation or associated criminal proceedings and the effect of any unlawfulness is considered by the court as part of its decision on the admissibility of evidence. A search may be carried out against the fingerprint and DNA databases on such material before its destruction, if the Chief Constable considers that to be desirable. That may serve to confirm the person's identity, indicate that he or she had previously been arrested under a different name or indicate a potential match of the person's biometric material to the fingerprints or DNA profile obtained from a crime scene.

300. Does the Committee want me to go through this article by article or stop at each article?
301. **The Chairperson:** If members have any points they want to raise as we go through each article, feel free to do so.
302. **Mr Hughes:** I will keep going.
303. Article 63C will permit the retention of article 63B material taken from a person in connection with the investigation of an offence until either the conclusion of the police investigation or the conclusion of any criminal proceedings brought against that person or any other; for example, a co-defendant.
304. Article 63D provides for the retention of material taken from persons arrested for or charged with but not subsequently convicted of certain serious violent or sexual offences, referred to in the Bill as qualifying offences. A list of qualifying offences will be set out in article 53A of PACE, which will be incorporated when the relevant sections of the Crime and Security Act 2010 are commenced. Article 63D includes a provision that recurs throughout the articles, and it provides that, where article 63B material is taken on arrest in connection with a recordable offence, whatever the outcome of that particular investigation, that material may be retained indefinitely if the individual concerned has a previous conviction for a recordable offence. Material is retained on the strength of the earlier conviction in respect of which article 63B material may already be held; the purpose being to ensure that existing lawfully held records are as up to date as possible. Exceptions to this are where the material was obtained unlawfully or on the basis of mistaken identity, or where the previous conviction was for an excluded offence; that is, a single conviction for a non-qualifying offence, a minor offence committed while under the age of 18 and one for which a custodial sentence of less than five years was imposed. In such a case, the material may be retained only for the duration of the retention period relevant to that offence. Where a person has been charged with a qualifying offence but not convicted, the article provides for the retention of such material for a period of three years, with a single possible extension of two years on application to the courts. It provides the police with the right of appeal to the County Court against a refusal to grant an extension, or, alternatively, the right for the subject to appeal against the granting of an extension.
305. Article 63D also deals with the material taken from persons arrested for but not charged with a qualifying offence. That material may be retained for three plus two years if the Chief Constable considers that certain prescribed circumstances apply and independent authorisation is given. In light of the comments of the Examiner of Statutory Rules, we intend to set those circumstances out in the Bill rather than in an order, as originally intended, although we will want to take an order-making power to be able to change the criteria. Those circumstances will, as suggested in the early briefings, include

- cases where the victim is a juvenile, a vulnerable adult or associated with the person to whom the material relates. For those purposes, “associated with the person” will be defined by reference to article 3 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998. They will also include cases where those three categories do not apply but where the Chief Constable is satisfied that grounds exist for the retention of the material in the interests of public protection.
306. I would just like to expand briefly on that last point. The case made by the police has revolved around the issue of alcohol and sexual predation. They cited instances where, for example, allegations of rape may have been made against individuals in the city centre on a Friday or Saturday night but charges cannot be brought due to the intoxication of the victims at the time of the alleged offence and the assertion by the individuals concerned that sex was consensual. They make the point that, if, for example, three different women make the same allegation against the same person on three different occasions, they would welcome the power to retain a DNA profile and fingerprints in the absence of charges. The power would be framed with that in mind. As I mentioned, retention in such circumstances would be subject to independent approval. The Bill provides for this role to be carried out by a biometric commissioner, but we are examining the possibility of the courts taking that role.
307. Article 63D(11) and article 63D(12) make provision for the Department to appoint a Northern Ireland Commissioner for the Retention of Biometric Material, who would deal with applications from the police for the retention of material under article 63D(5) where prescribed circumstances may apply. Article 63D(13) provides that material that falls under article 63D(5) can only be retained with the commissioner’s consent and that an order by the Department prescribing the circumstances in which applications can be made may also set out the procedures to be followed in relation to any application by the police to the commissioner. Of course, if we pass that approval function to the courts, much of this section will fall away.
308. Article 63E provides that article 63B material taken from persons arrested for or charged with but not convicted of a minor offence must be destroyed unless they have a previous conviction other than for an excluded offence.
309. Article 63F provides for indefinite retention on conviction for a recordable offence, as is the case at present, unless the offence is an excluded offence as provided for in article 63H.
310. Articles 61 to 63 of PACE, as amended by section 9 of the Crime and Security Act 2010, provide police with powers to take fingerprints and a DNA sample from persons convicted of a qualifying offence outside Northern Ireland. Article 63G provides that the fingerprints and the DNA profile derived in such cases may be retained indefinitely.
311. Article 63H sets out the retention period for material taken from a person under the age of 18 when convicted of a first minor offence. In such cases, the retention period will be determined by whether or not a custodial sentence is imposed for the offence. Where no custodial sentence is imposed, the material may be retained for five years only. Where a custodial sentence of less than five years is imposed, material may be retained for five years plus the length of the sentence. When a person is given a custodial sentence of five years or more, or in the event of a further conviction, material may be retained indefinitely. For these purposes, “custodial sentence” has the same meaning as in Part 2 of the Criminal Justice (Northern Ireland) Order 2008.
312. Article 63I provides that any fingerprints or DNA profile provided voluntarily by a person, for example, to eliminate themselves from an inquiry, must be destroyed as soon as they have fulfilled the purpose for which they were taken.

313. Article 63J provides that a person's fingerprints and DNA profile that would otherwise be destroyed may be retained if the person consents to their retention. This applies both to material taken under the powers in part 6 of PACE and to material given voluntarily under article 63I. Consent must be in writing and can be withdrawn at any time.
314. Article 63K provides for the retention of material in cases where a person arrested for one offence is subsequently arrested for, charged with or convicted of a second, unrelated offence; an offence other than that in connection with which the material was taken. In such a case, the retention of the material would be governed by the rules applicable to the second offence.
315. Article 63L provides that, if fingerprints are required to be destroyed under the retention framework, any copies held by the police should also be destroyed and that, if a DNA profile is to be destroyed, no copy of that profile may be kept by the police, except in a form that does not identify the person to whom the profile relates. While Forensic Science Northern Ireland (FSNI) retains material on behalf of the police, the legal relationship between them in that matter is that of agent and principal respectively. If the police no longer have the authority to retain material, FSNI has no independent authority in its own right to retain it.
316. Article 63M deals with the destruction of DNA samples taken by police under any power in PACE or provided voluntarily in connection with the investigation of an offence. It requires that DNA samples be destroyed as soon as a profile has been satisfactorily derived, and no later than six months from the date the sample was taken. The other samples, such as a blood or urine sample taken to test for alcohol or drugs, must similarly be destroyed within six months of having been taken. However, the article allows the Chief Constable to apply to the courts for the retention of a DNA sample beyond the point at which it should be destroyed if, having regard to the nature and complexity of other material that is evidenced in relation to the offence, the sample is likely to be needed in any proceedings for the purposes of disclosure to or use by a defendant or in response to a challenge by a defendant on the admissibility of material in evidence. Any application in such a case must be made before the date on which the sample would otherwise fall to be destroyed. The court may make an order allowing a sample to be retained for a period of 12 months from the date it should otherwise be destroyed and for renewal on one or more occasions for a further period of 12 months. A sample retained under such circumstances may not be used for any other purpose. It must be destroyed as soon as an order ceases to have effect. Article 63M(11) enables a person's DNA sample that would otherwise be destroyed to be retained until a DNA profile has been derived from the sample and a search of the relevant database carried out.
317. Article 63N restricts the use to which fingerprints and DNA samples and profiles may be put to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or for purposes related to the identification of a deceased person or the person to whom the material relates. It makes clear that material that should otherwise have been destroyed must not be used in evidence against the person to whom the material relates or for the purposes of an investigation of any offence. In all likelihood, any evidence obtained from the impermissible use of the material would be ruled inadmissible in criminal proceedings.
318. Article 63O(1) and article 63O(2) exclude from the PACE retention framework biometric material taken from persons detained under the Terrorism Act 2000. That Act has its own retention provisions that apply to such material. Article 63O(3) excludes biometric material taken under the International Criminal Court Act 2001 to assist in obtaining evidence of a person's identity. Article 63O(4) excludes material obtained under the Terrorism Prevention

- and Investigation Measures Act 2011 (TPIM) and material from persons in respect of whom a TPIM notice has been imposed. That Act also has its own retention provisions. Article 630(5) disapplies the PACE retention framework to any material that is, or may become, disclosable under the Criminal Procedure and Investigations Act 1996 or its associated code of practice. The Act sets out the disclosure duties of the prosecution and the defence in relation to criminal proceedings. That will ensure that evidential material remains available for examination by defence experts and, potentially, the Criminal Cases Review Commission, if required. Article 630(6) excludes biological material taken from one person that relates to another person — for example, a DNA profile obtained from a sample taken from a rape suspect that is found to relate to the victim. Finally, under 630(7), material taken from persons under immigration powers or information held by the police for use for immigration purposes is also excluded from the retention framework.
319. **The Chairperson:** Before you go on to schedule 3, David, we will give you a break for a moment. Mr McCartney and Patsy McGlone have a couple of points that they want to raise about some of those issues.
320. **Mr McCartney:** You talked about article 63D and the commissioner role. Did you say that there is a possibility that the Department may hand that to the courts?
321. **Mr Hughes:** We need to examine that possibility, because I think there are pros and cons.
322. **Mr McCartney:** We are shaping the Bill, so when will you conclude on that? We have raised the need for this in a previous session. If there is not going to be a commissioner, when will we know? We have to examine that in the Bill.
323. **Mr Ian Kerr (Department of Justice):** We gave an undertaking that we would explore this with the various people with whom we need to do so and that,
- if we were convinced that it was a workable option, we would bring forward an amendment. We would be able to bring that amendment forward for Consideration Stage.
324. **Mr McCartney:** But do you see the difficulty for us in taking the Bill through Committee Stage? There is a possibility that this role could be handed over to the courts. We have said in the past what we feel is the appropriate way to deal with this. The Committee will be asked to do a bit of work on it, and active consideration will be given to this.
325. **Mr Kerr:** I appreciate the point that you make. We will certainly get a decision to the Committee as soon as we can.
326. **Mr McGlone:** I am seeking a wee bit of clarity on the retention of article 63B material pending investigation or proceedings. Article 63C(2) states:
- “The material may be retained until the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against any person for the offence, until the conclusion of those proceedings.”*
327. I understand the second bit, but at what point is the conclusion of the investigation of the offence? Could it be retained for a few months, a few years or many years?
328. **Mr Gary Dodds (Department of Justice):** No. There would be an obvious conclusion to any investigation, whether charges are brought or a conviction is secured. It is at that point that the material would be —
329. **Mr McGlone:** This seems to draw a distinction as regards the conclusion of the investigation, which could be that there is no conviction or charge. I understand that bit, but, to my mind, an investigation could still be ongoing for a number of years. I could be wrong, but I base that on stuff that we have heard in the past about investigations that continued for quite a while.
330. **Mr Kerr:** The intention of the legislation is that the material pertaining to an individual would be destroyed as soon

- as the police had concluded in the context of an investigation that that person was not to be proceeded with. It would be within those terms. The investigation would have concluded in respect of that individual, if you like, while the investigation itself might run beyond that.
331. **Mr McGlone:** I am not a legal person, and, reading that, the first bit is unclear to me:
- “The material may be retained until the conclusion of the investigation of the offence”.*
332. The second bit is clear enough, but the first bit is not that clear to me.
333. **Mr Hughes:** My understanding is that, in practical terms, the point at which the investigation concluded is sufficiently clear. That legislation informs the police who hold the material, and that is the point at which action is taken. It would be sufficiently clear within policing what is meant by “the conclusion of an investigation”.
334. **Mr McGlone:** Forgive me for suggesting that it could read, “The material may be retained until the conclusion of the investigation of that person in relation to the offence.”
335. **Mr Hughes:** I see the point that you are making.
336. **Mr McGlone:** Do you see the distinction?
337. **Mr Kerr:** That is a fair point and one that we can take up with the draftsmen, if that would be helpful. However, there is a subsidiary point about the use of the word “any”. The original drafting was against “the” person, which reflects the situation in England and Wales under the Protection of Freedoms Act 2012. The use of the word “any” is at the suggestion of the Attorney General. He raised the possibility of a co-defendant using as their defence the fact that they had been with such and such an individual at the time of the offence, which would effectively, in their mind at any rate, rule them out of the investigation. If DNA from the person on whose activities they were relying was subsequently placed at the crime scene, that material could conceivably be probative against an individual other than the individual from whom it came, and the Attorney General wanted us to draft that so as to capture both possibilities. There could perhaps be a situation where a case against the original individual is not being proceeded with because he or she is in poor health or is now deceased but the material is still probative in respect of someone else. We will need to look at that aspect of it.
338. **Mr McGlone:** That bit is still not clear to me, and, if it is not clear to me, somebody else somewhere else will feel the same. I do not know what we are suggesting. Can you look at rewording that?
339. **Mr Hughes:** We can certainly take the question as you have asked it and discuss with the draftsman the effect that he believes has been achieved by what is written. Let us take that particular point back.
340. **The Chairperson:** You mentioned the commissioner for the retention of biometric material. Keep me right on this: does the legislation state that a commissioner post will be established or does it just give the power to establish it if the Department wants to?
341. **Mr Kerr:** Article 63D(11) provides for the Department to appoint a commissioner, and the next paragraph refers to that. So, the commissioner would be appointed under the Bill. We were then going to provide for the prescribed circumstances and the procedures to be used in application to the commissioner in subordinate legislation. However, we have since had a conversation with the Examiner of Statutory Rules, and that material will now be incorporated in the Bill and will mirror provisions that appear in the Protection of Freedoms Act 2012. The debate, as we discussed with Mr McCartney, is whether we appoint a commissioner or refer the matter to the courts. To a certain extent, much will depend on the volume of cases that are likely to go the courts way. If they will

- collapse under the weight of them, the Lord Chief Justice might have issues with that. That is only one aspect of it. There are other issues, and we still have to tease that out in discussion with our partners in this matter.
342. **Mr Hughes:** I will come to your specific question. The Bill is drafted so that the Department must appoint a commissioner. If the view of the Examiner of Statutory Rules is that the prescribed circumstances need to be placed in the Bill, we would have a greater degree of certainty about the impact that would have on what the approval mechanism would be required to face. On the back of that, it would be easier to take a view on whether having that approval mechanism going to the courts is practicable and workable or whether it is more effective to follow the way that the Bill is currently drafted, with that approval mechanism going to a commissioner. So, triggered by the issue of putting prescribed circumstances in the Bill, that decision needs to be taken as the Bill is taken through the Assembly. If it is to be done through the courts, the provisions as currently drafted could not stand because they say that you have to have a commissioner. They would have to be replaced by an alternative set of provisions that would give that role to the courts instead.
343. **The Chairperson:** So either the commissioner takes the decisions or the courts do?
344. **Mr Hughes:** Yes.
345. **The Chairperson:** When the Chief Constable wants to apply to retain material for a further two years and so on —
346. **Mr Hughes:** It is not about the retention for an additional two years; it is about the prescribed circumstances. The decision on the extension for two years lies with the courts already.
347. **The Chairperson:** So the debate is whether the prescribed circumstances in which you could retain it will be dealt with by a commissioner or whether
- it should go straight to the courts to decide.
348. **Mr Hughes:** Yes. This is possibly the easier bit. [Laughter.] Schedule 3 makes provision for minor and consequential amendments associated with the introduction of the new retention framework. It adds necessary definitions to the interpretation of part 6 of PACE and article 53 as new paragraphs 3A and 3B to that article. Paragraph 3A would exclude the destruction of samples under article 63M, in which routine destruction is required by the framework, as grounds for police to take a fresh sample. Legitimate grounds under article 53 may be damage to the whole or part of a sample, rendering it unreliable.
349. Paragraph 3B clarifies the definition that persons “charged with an offence” includes persons who are informed that they will be reported for an offence — in effect, being summoned to court by the Public Prosecution Service — as a means of initiating proceedings and regarded as equivalent for the purposes of the framework. The schedule adds to the list of qualifying offences in article 53A of PACE the offences of robbery and assault with intent to rob under section 8 of the Theft Act (Northern Ireland) 1969. The list already includes burglary and aggravated burglary under sections 9 and 10 of that Act.
350. Paragraph 3 inserts a new article 53B into PACE to provide a number of interpretational provisions relating to the application of the retention framework to persons convicted of an offence. Article 53B(1) provides that a reference to a person convicted of an offence includes a person who has been given a caution, a person found not guilty of the offence by reason of insanity, or a person found to be under a disability and to have committed the offence. Article 53B(2) provides that, for the purposes of the retention framework, a conviction for a recordable offence will continue to be considered as such, notwithstanding that it is regarded as spent for the purposes of the Rehabilitation of Offenders (Northern Ireland) Order

1978. Article 53B(3) provides that, if a person is convicted of more than one offence arising out of a single prosecution, those convictions are to be treated as a single conviction for the purposes of those articles which include the concept of an exempt conviction or excluded offence. Article 53B(4) flags that new article 53(4) of PACE will be inserted on commencement of section 9(6) of the Crime and Security Act 2010 and applies the provisions of article 53B(1)(b) and (c) relating to insanity and disability findings by courts outside of Northern Ireland.
351. Paragraphs 4, 6 and 7 of schedule 3 are technical amendments that replace references to the previous retention framework with corresponding references to the new framework.
352. Paragraph 5 of schedule 3 amends article 89 of PACE to provide that an order under the new article 63D(5)(c), relating to prescribed circumstances, will be subject to the negative resolution procedure. However, in light of comments made by the Examiner of Statutory Rules, we will have to amend this to provide for the affirmative procedure.
353. Schedule 4(2) makes provision for repeals, consequential on or ancillary to the introduction of the new PACE retention framework. Previous provisions for the destruction of DNA and fingerprints were contained in article 64 of PACE. Part 2 of schedule 4 repeals that article and all subsequent amendments to it, including the retention regime that was enacted but never commenced by the previous UK Government.
354. Those are all the biometric provisions of the Bill. We will take any further questions.
355. **The Chairperson:** I do not have any more specific questions.
356. **Mr McCartney:** Does a person have the right to question when their DNA is being retained? Is there any provision for that? The Bill states that, when someone is arrested for an offence and not necessarily charged, their DNA can be retained. Have they any recourse to ask why it is being retained in those circumstances?
357. **Mr Kerr:** As with the existing framework, the new framework is permissive, if you like, or enabling. It allows but does not require material to be held, so the police have discretion within the framework. They may not go beyond the framework or step outside it, but it is up to them how they act within it. If anyone objects to their material being retained, they are, without any provision having to be incorporated into the Bill, entirely at liberty to apply to the Chief Constable to have their material destroyed. There is no problem with that.
358. **Mr McCartney:** So that provision is there?
359. **Mr Kerr:** No. It is not in the Bill. That is what I am saying. We do not have to legislate for that.
360. **Mr McCartney:** I see. That is current practice.
361. I am sure that we will come back to this, but a lot of the observations made during the consultation related to balance in the presumption of innocence. This seems to run contrary to the presumption of innocence in a lot of cases. How do you address that particular concern?
362. **Mr Hughes:** The important thing to remember is that the presence of a DNA profile on the database does not compromise someone with regard to the presumption of innocence. That database is not a criminal record, but it has a purpose and function in the detection and prevention of crime. It may well be that it is to the benefit of some people that their DNA is on the database to rule them out. So it can be a means of underpinning the presumption of innocence in certain circumstances. I think that the popular suspicion that having one's DNA profile on the database is, in itself, a shadow over the presumption of innocence needs to be addressed in that way, because that is not what the database is, nor what it is for.



363. **Mr Kerr:** The concerns around the presumption of innocence relate to the retention of material from people arrested but not convicted. However, we all need to bear in mind that it is on precisely that point that the European Court of Human Rights refers to the Scottish model and the limited retention that it permitted at the more serious end of the offending spectrum.
364. **Mr McCartney:** Yes, but I have made the point before about a database, pro rata, becoming too big. One of the consultation papers is titled, 'Keeping the Right People on the DNA database'. That gives a sense of there being right people and wrong people, and, when it comes to the presumption of innocence, that is certainly not the best choice of words.
365. **Mr Hughes:** One of my early points was that the writing of these clauses into the main body of the Bill, not even the schedule, was because one of the purposes behind the legislation is to apply this new retention framework to everything that is already there. It is not just from day one onwards that there is a new retention framework; it is being applied to everything that is already there. There is a bit of a clearing out in line with a retention framework that recognises the judgement in the case of S. and Marper versus the United Kingdom, which lies behind article 8.
366. **Mr McCartney:** As it now stands, there is provision for children as young as 10 years of age to be on a DNA profile database.
367. **Mr Hughes:** That is in connection to conviction.
368. **Mr McCartney:** Is it only on conviction?
369. **Mr Hughes:** Gary, keep me absolutely right.
370. **Mr Dodds:** The Bill destroys material on databases that relates to persons who have not been convicted. So, primarily, you will have a database populated by those who have a conviction. Effectively, once the new framework comes into place, all existing and future material belonging to anyone not convicted will not be held indefinitely on the database, which is the case under present law. That will no longer happen.
371. **Mr McCartney:** Thank you.
372. **The Chairperson:** It would be helpful for me to have a paper showing how our system compares with that of England, Wales and Scotland. You mentioned that the European Court decided that Scotland's was the model to follow, but it would worry me if we followed that model. It would be useful if I could see just how our system compares with other parts of the United Kingdom. Perhaps you would supply that. Thank you.



## 4 October 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Easton  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

### Witnesses:

Mr John Patrick Clayton *Children's Law Centre*  
 Ms Paddy Kelly

373. **The Chairperson:** I welcome Paddy Kelly, the director, and John Patrick Clayton, an assistant policy officer, of the Children's Law Centre to the meeting. The session will be reported by Hansard and the transcript will be published on the Committee's web page in due course. I will hand over to you at this point, and you have eight minutes to present to the Committee.
374. **Ms Paddy Kelly (Children's Law Centre):** Thank you, Chair. I am Paddy Kelly, director of the Children's Law Centre, and this is my colleague John Patrick Clayton, who is one of our policy officers. On behalf of the Children's Law Centre, we thank the Chair, Deputy Chair and members of the Committee for inviting us to give evidence here today on the Criminal Justice Bill, particularly in relation to the retention of fingerprints and DNA profiles for children.
375. We have provided you with a short summary of our concerns, and we will speak to that before taking questions. For the benefit of members who may not be aware of the work of the Children's Law Centre, we are a charity based on the principles of the United Nations Convention on the Rights of the Child (UNCRC). We provide free legal advice and representation for children. We have a free phone legal advice line called CHALKY that is for children and their parents and carers. We also have a young person's advisory group. We provide training and research on children's rights, and we make submissions on policy, legislation and practice affecting children.
376. Within our policy and legal work, we focus on a wide range of children's issues, including looked-after children, children in conflict with the law, children with special educational needs, children with disabilities and children with mental health problems. Some of you will have already referred children and young people to the Children's Law Centre, and we are happy to take referrals to our legal advice service from MLAs about children who live in their constituencies.
377. **Mr John Patrick Clayton (Children's Law Centre):** As the Committee will no doubt be aware, the proposals in the Bill are being brought forward in an attempt to rectify the incompatibility of the current legislation, namely the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), relating to the retention and destruction of fingerprints and DNA profiles with the European Convention on Human Rights.
378. The current law was found to be incompatible with the European Convention on Human Rights in the case of *S and Marper v the United Kingdom*. Here, the court found that there had been a violation of article 8 of the convention as the current powers were found to be blanket, indiscriminate and did not strike a fair balance between competing public and private interests. The court also found that the retention of a non-convicted person's data may be especially harmful in the case of minors given their special situation and the importance of their development and integration in society.
379. The Children's Law Centre has serious concerns about the taking of fingerprints

- and the deriving of DNA profiles from DNA samples taken from children and young people, and the subsequent retention of that material. We argue that fingerprinting and taking DNA from a child is disproportionate, unjustifiable and in clear breach of children's rights standards. Committee members can see from our written evidence, from paragraph 5.5 onwards, that, for the purposes of clarity, we listed those clauses in the Bill that we feel are most relevant to children and young people. We also developed some hypothetical scenarios to outline how the provisions of the Bill may apply to children and young people in practice.
380. Schedule 3 to the Bill proposes to insert a new article 53B into PACE NI stating that any reference to a person convicted of an offence includes a reference to a person who has been given a caution. Cautions do not have the same status as convictions under other aspects of criminal law, as members can see from paragraphs 5.14 and 5.15 of our written evidence. The Children's Law Centre is very concerned that, as a result of this, various parts of the proposed legislation effectively mean that a child who receives two cautions for minor, recordable offences will have their fingerprints or DNA profile retained indefinitely. As the Committee is no doubt already aware, a recordable offence effectively means any offence that is punishable potentially by imprisonment.
381. One such hypothetical but potentially real scenario that could arise involving cautions under the Bill could be that of child A. Child A is arrested for theft; a minor, recordable offence. His fingerprints are taken and a DNA profile is derived from a DNA sample taken in connection with the investigation of the offence. However, child A is not subsequently charged with the theft. Child A's criminal record contains two previous cautions for theft, which involved shoplifting sweets when aged 10 and 12. Under the proposed article 63E, the child's fingerprints and DNA profile would be retained indefinitely, as a caution would be considered to be a conviction for the purposes of the Bill.
382. We believe that considering cautions in this way is an entirely disproportionate course. It runs contrary to the purported purpose of a caution, which is to divert children away from the criminal justice system. Although the Children's Law Centre does not believe that cautions adequately do this at present, for some of the reasons outlined at paragraph 5.15 of our written evidence, the situation will only be exacerbated if the use of cautions results in a child's fingerprints and DNA profile being retained indefinitely.
383. The Children's Law Centre believes that the proposals under articles 63D and 63E, relating to the retention of the fingerprints and DNA profiles of children who are not convicted of the offence for which the material has been taken as part of the investigation, and who are, therefore, innocent, significantly undermines the presumption of innocence and due process. The implication of the proposals is that children arrested but not charged with an offence, or charged but not convicted of an offence, are somehow not totally innocent or less innocent of the offence.
384. We agree with the argument put forward by the applicant in the S and Marper case that the retention of records casts suspicion on persons who have been acquitted, thus implying that they were not wholly innocent. We also agree with the application in that case that such retention can result in stigma that could be particularly detrimental to children.
385. Where fingerprints are taken, or a DNA profile derived, in connection with the investigation of a minor offence for which a child is subsequently convicted, proposed articles 63F and 63H appear to be the most relevant. Article 63H proposes to link the amount of time that a child or young person's fingerprints or DNA are retained to the length of their sentence, where the child is being convicted of a first minor offence. Article 63H also allows for the retention of fingerprints and DNA where children

- are given non-custodial sentences in respect of a first minor offence. We do not believe that the retention of fingerprints taken or DNA profile derived in connection with the investigation of minor recordable offences, where the child or young person is subsequently convicted, is a proportionate response.
386. In our written evidence, we referred to recommendation R (92)(1) of the Council of Europe's Committee of Ministers, which was adopted without reservation by the United Kingdom and which was also referred to by the European Court of Human Rights in the S and Marper judgement. That recommendation sets out that the results of DNA analysis should be routinely deleted when no longer necessary to keep them for the purposes for which they were used and that retention should take place only when the individual concerned has been convicted of serious offences against the life, integrity or security of persons subject to strict storage periods defined by domestic law.
387. Proposed articles 63F and 63H will apply to recordable offences that the legislation acknowledges to be minor offences rather than serious offences against the life, integrity or security of persons. We believe that to allow material potentially to be retained indefinitely in such circumstances would not accord with the concept of it being retained subject only to strict storage periods.
388. We will be happy to answer any questions that Committee members may have.
389. **The Chairperson:** Thank you. In what way do you see the retention of the DNA being detrimental? What you have said is all about the perception that they are not seen as innocent. How will a child's DNA being retained have actual repercussions for the child or a real detrimental impact beyond a perception of guilt?
390. **Mr Clayton:** You raise an interesting point about perception. We have thought of a hypothetical scenario involving a child or young person — I used the terms child A and child B a lot in the written evidence, so I will try to avoid doing that now — who was taken into care when they were 11 or 12, perhaps after a suspicion of sexual abuse in their family. They may have mental health problems and find themselves becoming involved in offending behaviour. They may start to receive cautions and, having received two cautions, then receive some help and support from within the children's home and begin to turn their life around.
391. Our fear is that if that child or young person is arrested a couple of years later — when their life is getting back on track — but is never charged, their fingerprints or DNA will be retained because of cautions in the past. The perception may not be as great to the outside world as it is for that person. In that person's eyes, they might feel like they are being stigmatised unfairly even though they have not been charged with an offence and still benefit from the presumption of innocence for that offence. They might feel like they have made significant efforts to get themselves back on track.
392. We think that that would have an effect on them at that time. It might affect their perception of themselves or how they are treated in the justice system. We believe that those are children and young people who will come into contact with the police and the justice system and whose fingerprints and DNA will be retained, probably indefinitely, under the clauses of this Bill.
393. **The Chairperson:** What about the argument that the Department has put forward that the retention of DNA can be a good thing because it can rule you out of having committed an offence? DNA can show immediately that it was not a particular individual.
394. **Ms P Kelly:** In our submission, we referred to a longitudinal study carried out on this in Edinburgh. To pick up my colleague's point, the study indicated very clearly that stigmatisation, which includes children and young people's contact with the criminal justice system,

- actually goes against their having positive experiences and can make them disengaged from the criminal justice system. The more you stigmatise a child in this way and the more contact they have with the criminal justice system, the more likely they are to re-offend. We believe that that would be counterproductive to what the youth justice review, for example, proposes in relation to children and young people in this jurisdiction.
395. **Mr McCartney:** Thank you very much for your presentation. You made the observation about the use of caution, and caution being seen as a conviction. Without prejudice to the wider argument, do you have any suggestions as to how this could be corrected in the Bill as drafted?
396. **Mr Clayton:** Cautions are intended to be a diversionary measure. That is their purported purpose. Our source, with respect to other aspects of the law that are not considered to be convictions, is the Public Prosecution Service code for prosecutors, which makes it very clear that cautions are not a conviction. They are recorded on the criminal record of a child for 30 months and on that of an adult for five years. So, it seems clear to us that cautions do not have the same effect as convictions under other aspects of the law. There is a bit of a disconnect between what is being suggested in the Bill and what happens under other aspects of the law. That, in itself, is concerning for consistency purposes.
397. The other question that we had arising from the Bill, and on which, we respectfully submit, the Committee may want to engage further with the Department, is that with children in particular there is a range of diversionary measures other than cautions, such as an informed warning or diversionary youth conference. We were not clear whether those will fall within article 53B because they are intended to have the same effect. The intention is to divert children and young people away from the criminal justice system. For clarity and consistency, if that article were to come into practice, which we think it should not, this would be a good thing to explore.
398. Our organisation has difficulty with the existing diversionary methods. We feel that they divert children from one part of the criminal justice system to another rather than out of the system. We are concerned that the net will be cast very wide with respect to the people who will be caught by these provisions. Generally speaking, as we understand it, a caution is given where the offending is considered to be less serious.
399. **Ms P Kelly:** Cautions as they apply to children and young people should not be considered as a recordable offence in the legislation and should be excluded from it.
400. **Mr McCartney:** Even without prejudicing articles 63B or 63C, how would that be worded, at least in the first instance, to cover your concern around cautions being seen as a recordable offence? I am not saying that we will be able to do that today.
401. **Ms P Kelly:** There should be a qualifying provision in the legislation to say that cautions as they relate to children and young people under the age of 18 should not be treated as a recordable offence. That is very firmly our position and, indeed, our position in compliance with the recommendations of the youth justice review that cautions, along with other convictions as they relate to children and young people, should be wiped clean when they reach 18.
402. As John Patrick said, we do not believe that cautions are diversionary but are being used as a diversionary tool. If the approach being taken in this jurisdiction, and certainly by other strands in the Department of Justice (DOJ), is that cautions are a form of diversion, and if you are now pulling them into a system of retention of DNA, that goes totally against the whole concept of diversion and diverting children and young people from the criminal justice system. The way to do that would be to include explicitly in the legislation that cautions

- of children and young people under 18 should not be treated as a recordable offence. It is interesting that cautions remain, as it were, on the record of a child for 30 months yet under this legislation their DNA will be retained for five years. There is a total disconnect.
403. It also appears that when the legislation was being drafted, proper cognisance of its outworking as it relates to children and young people was not given further and comprehensive examination. Had that been the case, some of these issues would have been picked up already. That is our position.
404. **Mr McCartney:** On a point of clarification, these observations are being reported by Hansard. Will the Department respond or will the Committee ask it to respond?
405. **The Chairperson:** Yes, we will.
406. **Mr Lynch:** Thanks for the presentation. Paddy, you mentioned the Scottish model. Will you outline your views on the Scottish model with respect to a person not convicted and how that was referred to the European Court?
407. **Mr Clayton:** We can discuss the Scottish model, although I do not know whether we can give the Committee a completely up-to-date analysis of it. I understand, Chair, that you requested a paper from the Department last week on the various models in England, Wales and Scotland. I can draw attention to some relevant parts of the S and Marper judgement that discussed the Scottish model. We looked at the judgement and thought there were some interesting points in how the European Court commented on the Scottish model. I think one reason the Department offered for bringing forward this legislation was that they were referred to the Scottish model by the European Court of Human Rights' judgement.
408. Two things struck us when we looked at it: first, the European Court of Human Rights noted that DNA profiles and samples are, generally speaking, destroyed in Scotland if the person is not convicted or is granted an absolute discharge. That is at paragraph 36 of the judgement. It also noted that the legislation allows for samples and profiles to be retained for three years, possibly rising to five years on application to the Scottish courts, if the person arrested is suspected of certain sexual or violent offences even if not convicted. However, later in the judgement, it notes that this power applied to adults. It could well be that that position has changed in Scotland, but that is how it was commented on at the time of the S and Marper judgement. That is at paragraph 109 of the S and Marper judgement. We thought that was an interesting observation to make. One point discussed in the S and Marper judgement about the system we have now and the system that existed at the time in England and Wales was that it retained everyone's fingerprints and DNA irrespective of age. Age was a consideration of the European Court of Human Rights, and one of the applicants of S and Marper was, of course, a child, so we think those are important issues to bear out.
409. To go back to the question the Chair asked earlier: that stigmatising effect on children and young people was also referred to in the judgement, so we think it is worth bearing in mind when considering, not just how this legislation would apply to everyone, but how it would apply to children and young people specifically.
410. **Mr McGlone:** Thank you very much; it is good to see you. To tease out that last point about S and Marper, did that judgement give any particular direction in relation to young people? I know that your conclusions from reading that S and Marper judgement are that the retention of a non-convicted person's data could be especially harmful to young people. Can you expand on how you think it can be harmful to young people? I have another question after that. Perhaps you could read from the judgement and expand on it.
411. **Mr Clayton:** It is a rather lengthy judgement, so I may not have the time to read it all —

412. **Mr McGlone:** Please do not read all of it.
413. **Mr Clayton:** I know there are other witnesses lined up, so I do not want to maintain the legal argument for too long. What is important about S and Marper is the fact that the European Court of Human Rights talked about the special situation of children. It referred to the fact that they have to be integrated into society. It mentioned their age and maturity, and so on, and, as I said, one of the reasons why it thought the current powers were blanket and discriminate was because they applied to everyone irrespective of age. It referred to the United Nations Convention on the Rights of the Child, which, as Paddy, said, is the document on which we are founded. It recognises the right of children who have either been alleged to have committed criminal offences or have been recognised as having committed criminal offences to be treated with a degree of dignity and to be re-integrated into society. We are keen to see that happen. Our fear is that these proposals on children and young people are very broad, and that an awful lot of children and young people could be caught within them.
414. **Ms P Kelly:** The definition of “recordable offences” is so wide that it will catch a number of children unintentionally. I know that the Committee has a considerable focus on the youth justice review and was very committed to early intervention through diverting children and young people away from the criminal justice system. It brought a lot of focus on that issue. We are very concerned about the stigmatisation effect on the children and young people who are caught in this. The potential for quite a few children is that if their DNA profiles and fingerprints were to be retained indefinitely, it could pull them back into the criminal justice system. The scenario is that one part of the Department of Justice is working very hard to ensure early intervention and diversion away from the criminal justice system, and then this legislation will pull children back into the criminal justice system by retaining their DNA and potentially, in their perception, stigmatising them and counteracting their good efforts to engage with society, get qualifications, and so on.
415. We think that there is a real potential for that happening because there is a total disconnection, to date, between one part of the Department of Justice and another in relation to that. To go back to the point that we made earlier, it appears to us that, had the Department of Justice flushed some of the scenarios that we presented in our written evidence through its proposals, it may have been aware of some of that disconnect, and some of the possibly unforeseen implications of the Bill.
416. **Mr McGlone:** Are you saying that the Department may need to refocus and look at the content of that European Court of Human Rights judgement on S and Marper to see what weight should be given to it in light of that judgement?
417. **Mr Clayton:** I am sure that the Department has studied S and Marper. There may be some benefit in its looking at how the Scottish model was commented on in S and Marper. Our concern is that S and Marper does discuss the age of people. The judgment comments on the Scottish model and it refers to it being applied, at that time, to adults. We think that this is something that may be worth the Department bearing in mind. It may well have already considered this, but that is not borne out in the proposals put forward.
418. **Ms P Kelly:** In considering what the provisions may look like in the legislation, we thought that there may be scope to apply articles 63D and 63E to adults only. Then, looking at a particular provision, if it was in the mind of the legislature to try to retain any DNA and fingerprints of children and young people, which we oppose, then a specific clause should relate to children and young people that takes cognisance of some of the issues — hopefully, not cautions — of children who committed minor offences and are trying to their life back on track. So, a child-specific clause may be needed that takes cognisance of



- that and of the excellent work going on in other parts of DOJ around diversion.
419. **Mr McGlone:** You read my mind. You said that to retain fingerprints and DNA following the conviction of children and young people for minor offences was not proportionate. Will you expand on why you think that?
420. **Mr Clayton:** I will follow up on what Paddy said about the need for a specific provision. I am sure that the Committee will be aware that article 63H refers to children convicted of a “first minor offence”. As we said in our opening remarks, it links the retention period to the sentence that they receive.
421. That leads on to our concerns about cautions, the issue of which, we respectively submit, is not entirely clear in the Bill. Article 63H talks about children who receive a custodial sentence and it adds a five-year retention period to the length of the sentence. So, a child with a one-year custodial sentence gets five years on top of that; therefore, a six-year retention. It also talks about children who receive sentences other than custodial, for example court-ordered youth conferences, and so on; about their fingerprints and DNA being retained for five years from the point at which they were taken. On reading that, we were not entirely clear whether a caution would fall into that. Our concern was that such a child may potentially qualify, because the Bill is not clear. However, is there the potential for the fingerprints and DNA to be retained for five years for a child who receives their first caution? That may something about cautions that is worth exploring further.
422. To go back to your question about why it is not proportionate. We have concerns that the recommendation of the Committee of Ministers in this regard talks about people convicted of offences committed:
- “against the life, integrity and security of a person”*
423. and about strict storage periods defined by law. Our concern is that recordable offences are broad — they are any offences that are punishable by imprisonment. They are not necessarily serious offences against the life, integrity and security of a person, nor, necessarily, violent or sexual offences. The Bill provides the scope for fingerprints and DNA to be retained indefinitely. That also, in our minds, would seem to engage that second part of the recommendation, which is to subject the retention to strict storage periods.
424. Our concern is that if you are a child aged 14, and you find that your fingerprints and DNA will be retained for the rest of your life, that will have more of an effect on you, potentially, than for somebody who is 30, 40 or 50. It is, naturally, going to be a longer period for that young person.
425. **The Chairperson:** The next contributions need to be very brief, because our time is up, and Mr Maginness and Ms McCorley have still to ask questions. Members should bear in mind that there are another two presentations to come on identical issues, and I suspect that those presentations will also be identical. We do not need to get all the issues out of our system with the first group of witnesses.
426. **Mr A Maginness:** I do not know whether I can obey your instructions. *[Laughter.]* I take the view that, if I were an innocent person who was fingerprinted and DNA'd, or whatever the verb is, I would be very resentful of that. If a child were involved, I would be furious about it, especially if it were my child.
427. However, you get the situation where the child is not innocent, or has been convicted of something. You say that there should be no retention in the case of a minor offence. Is there a contrary argument to that? Sometimes, you are dealing with vulnerable children who may be associating with other people who are involved in criminal activity or, indeed, sexual criminal activity against them. If their DNA or fingerprints were recorded at a crime scene, would

- that not be something of value in the protection of children?
428. **Ms P Kelly:** I am sorry; I am not quite sure —
429. **Mr A Maginness:** Take a crime scene situation, where, say, a sex offender was, in fact, engaging with children, attracting children to their home or something like that. If DNA or fingerprints from the children were recorded at the scene, would that not assist the police in investigating the case, thereby protecting those youngsters who may be vulnerable?
430. **Mr Clayton:** I can, perhaps, see the point that you are getting at, Mr Maginness, which applies if, for example, a child or a young person is associating with, shall we say, a bad crowd. I take your point, but I think that there are probably more proportionate and more useful ways to do that across the broad spectrum of cases involving vulnerable children and young people.
431. I do not know whether fingerprints and DNA are necessarily the answer. You would end up fingerprinting and DNA-ing a lot of children without necessarily having a connection to how that would then protect them. I can see your point, but I think that that would require an awful lot of thought and a certain amount of safeguards, given that we are talking about children who would also have a right to privacy in all this, which is what the S and Marper judgement is founded on.
432. **Mr A Maginness:** I understand the essence of the judgement. I am slightly concerned that there might be a situation where, in fact, you could be protecting such children. I understand the argument about the stigmatisation and marginalisation of children in such situations, but you might just want to take that other aspect into consideration.
433. My final point is about recommendation R(92)1 that the Council of Ministers made. It is a very strong statement that retentions should only take place:
- “where the individual concerned has been convicted of serious offences against the life, integrity or security of persons. In such cases strict storage periods should be defined by domestic law”.*
434. That is very strict, but this certainly does not meet any of that, does it?
435. **Ms P Kelly:** That would be our interpretation of it, clearly. Again, our position is very clear and in compliance with the UNCRC. It is our belief that the retention of children’s fingerprints and DNA profiles should never happen. However, if that were to be legislated for, we would suggest that those are the only circumstances in which children’s DNA profiles or fingerprints should be retained, although we do not think that that is compliant with the UNCRC.
436. We would also note that there was no derogation of the UK Government to that recommendation. Our suggestion is, basically, that there should be one specific clause — none of the other clauses should apply to children and young people — that is very narrowly constructed and in compliance with the Council of Europe’s Council of Ministers’ recommendation.
437. **Mr A Maginness:** Do you think that if those recommendations were accepted, the Bill would be compliant with the European decision?
438. **Mr Clayton:** That would be a matter for any future challenge. It would be a matter for the courts to decide.
439. **Ms P Kelly:** It is our belief that it would move the Bill closer to compliance with the S and Marper judgement and to the UNCRC, which, of course, the UK Government have also ratified.
440. I also reiterate very strongly the view that cautions relating to children and young people should clearly be removed from this legislation.
441. **Mr A Maginness:** Should that happen so that there is no retention for children who are cautioned?
442. **Ms P Kelly:** Any other diversionary dispensation should not be construed

- as a recordable offence for the purpose of this legislation.
443. **Ms McCorley:** Go raibh maith agat, a Chathaoirligh, agus go raibh maith agaibh fosta. Article 63D refers to “prescribed circumstances”, but what that means is not outlined. Can you throw any more light on that?
444. **Mr Clayton:** As I understand it, at the Committee’s meeting last week, the departmental officials said that those circumstances will be in the Bill. At the moment, the Bill refers to them being made by order by the Department. In our written evidence, we stated that further clarification of what exactly that meant was needed. The Department said that it will take steps to clarify that in the Bill. As I understand it, the Department intends to refer to “vulnerable victims” or — I had a log of it somewhere in our written evidence.
445. **Ms P Kelly:** I think that, in his evidence to the Assembly, the Minister referred to what the understanding of that circumstance would be.
446. **Mr Clayton:** At the start of July, the Minister talked about a situation in which the victim is a juvenile or vulnerable adult or is associated with a suspected offender, who is, perhaps, a family member. I think that, last week, the Department said that it was going to take some guidance from the Family Homes and Domestic Violence (Northern Ireland) Order 1998 about what an associated person would be. I also understand that it referred to an additional ground outside those prescribed circumstances where there would be a certain amount of discretion on the part of the Chief Constable potentially to retain it if he thought that it were for the benefit of public protection. I am sure that that is something that the Committee will look at in greater detail as time goes on. As I understand it, those will now be in the Bill. The Department has been advised that it would be beneficial for it to do that.
447. **Ms P Kelly:** Where article 63D is concerned, we are very clear that the DNA or fingerprints of a child who is, effectively, innocent — they have been arrested or charged but not convicted of any offence — should not be retained under any circumstances.
448. **Mr Easton:** I am new to the Committee, so I am trying to get my head round this bit. You made a couple of wee statements about children being stigmatised and being more likely to reoffend if there were two cautions. You also said that if a child were trying to get back on track and they were in this situation, it would make it more awkward for them to get back on track. What proof do you have for that?
449. **Ms P Kelly:** We referred in our written evidence to the Committee to longitudinal studies that have been done in Edinburgh that very clearly demonstrated that, where children have contacted the criminal justice system in any form, they are more likely to feel stigmatised, less likely to be diverted from the criminal justice system and more likely to retain contact with the police or the criminal justice system. A lot of work has been done on the group of children and young people who have prolonged contact with the criminal justice system. All the evidence says that diversion from the criminal justice system at the earliest possible stage for children and young people is more likely to lead to their long-time diversion from that system.
450. **The Chairperson:** I was going to conclude on this point. How does the retention of DNA bring those children and young people back into the criminal justice system? Surely that happens because they commit an offence.
451. **Ms P Kelly:** Sorry —
452. **The Chairperson:** You said that if we retain the child’s DNA, that will bring them back into the criminal justice system. I think that that was what you said. How does the retention of DNA do that?
453. **Ms P Kelly:** My colleague gave a very good example of a child who has been taken into care and looked after —

- maybe they have been abused — and has a caution for breaking a window in a children’s home. Maybe there is a second caution for a similar minor offence when they are a child. Perhaps they begin to suffer mental health problems and begin to get excluded from school. That is the profile, as the Committee knows, of children and young people who are in the criminal justice system. They could get a second caution as a child, and then, at maybe 17, they are perhaps volunteering with Voice of Young People in Care and becoming peer advocates for other looked-after children. They begin to get their life back in place and are then arrested for a serious offence but not charged and certainly not convicted. When we were looking at the Edinburgh evidence and thinking of scenarios, we saw that that was consistent with what is coming through. In their self-perception, that could be very damaging. They tried to get their life together again, and now they are being drawn back into the system with the potential for their DNA profile or fingerprints to be retained for life. Where self-esteem is concerned, especially where the profile is that of a young person, we think that there is a real risk that the work that that child did to rebuild his or her life will be impacted by unnecessary retention of their DNA. That applies especially when they have been arrested but not convicted. So, those are the types of scenario that could happen.
454. **Mr Clayton:** Although that person will not be charged with the offence, their fingerprints and DNA will be retained, suggesting that it is thought that they did it, even though they will not be charged or convicted.
455. To touch on one other brief point, Chair, article 63D also —
456. **The Chairperson:** If they are cautioned, they did it.
457. **Mr Clayton:** This is the thing. There is an argument about the presumption of innocence, in the sense that, yes, they were cautioned in the past. However, according to our reading of it, this legislation seems to say that if you were cautioned in the past and you are brought back and arrested for something completely different, that past caution will effectively be used as a justification.
458. **The Chairperson:** Yes, but they will still have that caution. I am trying to get my head around this. They will still have that caution, and if they get rearrested later in life, that caution will still be there.
459. **Ms P Kelly:** The cautions for children and young people are spent after 30 months to begin with. We have issues with cautions being a real diversion, but the use of diversionary cautions is the path that the Department of Justice has taken. Cautions are diverting children from the criminal justice system. I know that the Committee supports that diversion and early intervention, etc, because it works. We are concerned that that retention is undermining the work on diversion and is pulling children back into the criminal justice system, certainly with the retention of DNA profiles and fingerprints.
460. **The Chairperson:** Is it not solely, though, that that retention is completely based on an individual’s interpretation of what it means to them? You talked about their self-esteem and how their DNA being retained would make them feel.
461. **Ms P Kelly:** The Council of Ministers at the Council of Europe has been clear that if you are retaining beyond strictly limited circumstances, that is not compliant with human rights standards.
462. **The Chairperson:** I know, but that is why we are doing this, obviously.
463. **Ms P Kelly:** Yes.
464. **The Chairperson:** At least it improves it for children.
465. **Mr Clayton:** To touch on something that Mr Maginness said and on another part of article 63D, it allows, even where there are no previous convictions, in circumstances where someone is charged with a qualifying offence. From our understanding of the Bill’s explanatory and financial memorandum,

- I think that article 63D(4) states that fingerprints or DNA will be retained, not indefinitely but possibly up to five years. I think that Mr Maginness said that a person would feel very aggrieved by that. That could be someone who has had no previous convictions or interaction with the criminal justice system and who may find themselves in the scenario of being acquitted but not convicted of an offence, yet their fingerprints and DNA will be retained. That provision is also in article 63D.
466. **The Chairperson:** Lastly, and this will shorten the next presentation, I am quite sure — the Children's Law Centre may feel that it has been picked on. However — Mr Wells.
467. **Mr Wells:** I am at a total loss to understand the logic of your argument. I was involved in a car crash a couple of years ago, and I had my fingerprints, photograph and DNA taken. I forgot all about it until the conversation came up about this particular European directive. It never occurred to me. I have never requested for those records to be destroyed on the basis that the only thing that I have to fear is that, if I commit a serious offence, those records will be used against me, and rightly so. Why would I have anything to worry about?
468. Why would a child or young person even think about it? Why would they feel stigmatised? I cannot understand how it could get into their heads that they should be carrying on their shoulders the awful burden that someone took a swab from the inside of their mouth and kept a record of it. I just cannot see the thought process that would allow their going round the streets of Belfast or wherever with that awful stone of guilt on their shoulders.
469. **Ms P Kelly:** If you look at the S and Harper case, you will see that one of the applicants to the court was a child. So, obviously, it had an implication for them in that they were prepared to pursue it. I think that that is a very good example.
470. **Mr Wells:** I have no doubt that someone pursued it on their behalf — some liberal who wished to try to prevent the police from exercising their duty. *[Laughter.]*
471. **Mr McCartney:** Presumption of innocence.
472. **Mr Wells:** I am absolutely certain that the young person could not do it. They probably did not even know what was going on.
473. **Mr Clayton:** I do not know about that. I presume that the lawyers representing that person took their instructions. We do not know the ins and outs of the case, but, as Paddy said, it was a young person in the S and Harper case who applied to the Chief Constable of Sheffield, or whatever police district that is, to have the records destroyed. They were not destroyed, and the case went all the way to the European Court of Human Rights.
474. **Mr Wells:** Have you come across a young person who has been traumatised because a DNA record has been kept of them? Does such a person exist?
475. **Mr Clayton:** I have been working in the Children's Law Centre for three months, so I have not come across too many children or young people in that context.
476. **Mr Wells:** In all my dealings with youth offenders, I have never met anybody who said that they cannot sleep at night because their DNA record is being kept as a result of some previous caution.
477. **Mr Clayton:** I do not know whether that is necessarily a good reason to do it. We observe that there could be a stigmatising effect. As Paddy said, research has shown that children and young people's becoming more associated with the criminal justice system generally leads to more, rather than less, offending.
478. **Mr Wells:** I do not understand how the mechanical taking of a DNA sample adds to that. Surely the caution, which is there whether they like it or not, is what

- causes any degree of stigmatisation.  
The actual —
479. **Ms P Kelly:** Children and young people are moving on, for example, in the scenarios that we gave you. They may have had a number of cautions for a whole range of reasons. If you looked at the profile of children who come into contact with the criminal justice system, you would see that the research shows that the single biggest determinative is exclusion from school. If a child is either not able to go to school or is excluded from school, they are more likely to come into contact with the criminal justice system. They are more likely to get cautions. They may have a number of cautions when they are 10 or 12. They may be moving on and developing, get to the age of 17 and have their life back on track. They may then be arrested but not charged for a serious offence. They are not found guilty. They are totally innocent of that offence, but their DNA profile is then retained.
480. **Mr Wells:** Why would the DNA be the straw that breaks the camel's back? Are you trying to tell me that, on top of all that track record, the retention of the DNA is what causes the young person to be stigmatised?
481. **Ms P Kelly:** It goes back to the idea that it undermines the presumption of innocence.
482. **Mr Wells:** DNA is very accurate. If I commit a crime and my DNA is tested, the chances are that I did it.
483. **Mr McCartney:** They said that about fingerprints.
484. **Mr Wells:** Fingerprints are very accurate as well.
485. **Mr McCartney:** They are not nowadays.
486. **Mr Wells:** I am saying that the only person who has anything to fear is the person who subsequently commits a crime and whose DNA is used to prove it.
487. **Mr Clayton:** It is interesting that you refer to that. I believe that the Governments argued in the S and Marper case that the retention of material leads to subsequent convictions. However, the court and the applicants in the case raised the question of whether that is the definitive factor that leads to future convictions.
488. **Mr Wells:** What is the problem with it if it leads to future convictions?
489. **Mr Clayton:** I do not necessarily have a problem with someone being convicted if they have committed an offence. You seem to be saying that fingerprints and DNA are accurate and that they will always lead to convictions in the future. As other members said, that is not always necessarily the case. I do not claim to be an expert in that material, but, presumably, you have to consider whether advances in science, and so on, would have an impact on how we use that sort of evidence in the future. So, I do not think that it is necessarily an exact science or that, just because fingerprints and DNA are detected, it necessarily means that someone committed the offence.
490. **Mr Wells:** They have been incredibly useful in recent years in putting away some of the most horrible gangsters, criminals and child abusers in the country — people who would be walking the streets today if it were not for the modern science of DNA. You are telling us that we should be throwing away a bank of information that may well be useful in the future to identify criminals.
491. **Ms P Kelly:** I will go back to what the Chair said. Basically, this is giving effect to a judgement that clearly stated that the retention of that DNA is a breach of article 8 and that it undermines the presumption of innocence.
492. **Mr Wells:** That does not mean that we agree with that judgement. We might be forced to do something about it, but it does not mean that we actually believe the basis on which it was made.
493. **The Chairperson:** OK. Thank you very much. I appreciate your earlier comments about your organisation's work. I have used it in my constituency and found you very effective in

representing some of my constituents,  
so thank you very much.

494. **Ms P Kelly:** Thank you very much. I hope  
that you continue to use us.





## 4 October 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Easton  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

### Witnesses:

Mrs Patricia Lewsley-Mooney	<i>Northern Ireland Commissioner for Children and Young People</i>
Ms Colette McIlvanna	

495. **The Chairperson:** I welcome Patricia Lewsley-Mooney, the Commissioner for Children and Young People, and Mairéad McCafferty, the chief executive of the Northern Ireland Commission for Children and Young People (NICCY). The meeting will be recorded by Hansard.
496. **Mrs Patricia Lewsley-Mooney (Northern Ireland Commissioner for Children and Young People):** I thank the Committee for the opportunity to present the evidence concerning the aspects of the Criminal Justice Bill that relate specifically to the retention of fingerprints and DNA profiles. Unfortunately, Mairéad could not make it and is not with me today. With me is Colette McIlvanna, who is from my legal and casework team.
497. **The Chairperson:** Collette, you are very welcome.
498. **Mrs Lewsley-Mooney:** I will give a brief presentation and then open it to questions from members. As you may be aware, under the legislation that created my office, I have a mandate to keep under review the adequacy and effectiveness of law practice and services relating to children and the rights and best interests of children and young people by relevant authorities.

In determining how to carry out the functions of my office, my paramount consideration is the rights of the child, and the work of my office is based on the United Nations Convention on the Rights of the Child (UNCRC).

499. The retention and destruction of the fingerprints and DNA of children and young people is an issue that I have been monitoring for some time. In 2007, I highlighted my concerns about DNA retention, particularly its indefinite retention. I asked the PSNI and the Policing Board to reconsider their position because I believed that it potentially convened articles 16 and 40 of the UNCRC, which relate to children and young people's rights to privacy and freedom and to be presumed innocent until proven guilty.
500. In 2008, my office submitted joint evidence with the Children's Commissioners in England, Scotland and Wales to the UN Committee on the Rights of the Child, arguing that the indefinite retention of children's DNA contravened children's privacy rights under article 16 of the UNCRC. The UN committee shared this view, and in its concluding observations in November 2008, it recorded its concerns around the issue that data regarding children are being kept in the national DNA database, irrespective of whether the child is charged or found guilty. The committee then called on the Government to introduce stronger regulations for data protection in relation to legislation and practice where this potentially impacted on children and young people's right to privacy.
501. In June 2011, my office responded to the Department of Justice consultation on proposals for the retention and destruction of fingerprints and DNA in Northern Ireland. This response was forwarded previously. Many of the concerns that were identified

in our response arose again in our analysis of this Bill. Indeed, it appears that very few of the issues that we raised were addressed in the Bill. In reviewing the Bill's proposals, I believe that insufficient consideration has been given to the potentially negative implications of retaining DNA profiles and fingerprints, particularly where these impact on a child or young person's privacy and safety or when it leads to them coming into contact with the criminal justice system.

502. In its evidence to the Committee for Justice on 28 June 2011, the Department of Justice confirmed that, under police and criminal evidence legislation, DNA and fingerprints are held for juveniles between the ages of 10 and 18. This means that children as young as 10 may be asked to give DNA samples and fingerprints and, according to the Bill, to give their consent to have these samples taken. Therefore, I am concerned that such young children will be required to provide DNA samples, and I am also concerned that it is unclear how that consent will be sought. The Department of Justice consultation on the retention of DNA data and fingerprints states that the proposals will differentiate between adults and minors to ensure that particular attention is paid to the protection of minors. However, the only difference in the Bill appears to relate to a first conviction for a minor offence. Where a young person has no previous convictions and they receive a custodial sentence of less than five years, it is proposed that the material may be retained for a further five years. Where the sentence exceeds five years, it is suggested that the material may be retained indefinitely. Furthermore, where a young person has a previous conviction for a minor offence and they are charged with or arrested for a minor offence, the Bill allows for the indefinite retention of DNA or fingerprints. The retention of a child or young person's DNA or fingerprints for this period of time for a conviction for a minor offence does not constitute a proportionate response. Children and young people

should be afforded maximum protection under the law. However, five years without adding on the period of the custodial sentence is a considerable period for a child or young person's personal details to be retained by government. Therefore, I suggest that the Committee consider recommending a reduction in the period of retention of DNA and fingerprint material for young people who are convicted of a first, minor offence.

503. It is also of significant concern that the Bill includes a caution within the definition of an offence for which a person is convicted. That means that, in certain circumstances, if a child or young person has received a caution for a previous offence, their DNA or fingerprints could be retained indefinitely. Given that the purpose of a caution is to divert young people away from the criminal justice system, to include cautions under the definition of offences seems inappropriate and disproportionate.

504. If a child or young person is charged but not convicted of a serious offence and has no previous convictions, the Bill, as drafted, provides that their DNA or fingerprints may be retained for a period of three to five years. If a young person has been arrested but not charged, their DNA or fingerprints may be retained if prescribed circumstances apply. It will be important to ascertain what these circumstances may be, and, again, I would question whether this period of retention is proportionate. We have already heard from the Children's Law Centre that this issue is being addressed in the Bill. We welcome that. If a child or young person has not been convicted of or even charged with an offence, their DNA and fingerprints should not be retained. To do so is to seriously undermine the right to a presumption of innocence until proven guilty, thereby contravening article 40 of the UNCRC.

505. Research suggests that a disproportionate number of young people come into contact with the police and that it may be due to the

- fact that some are more likely to offend in their teenage years. Children and young people's lack of maturity should be taken into account and they should not be stigmatised by actions undertaken before they have reached adulthood. In my response to the Department's consultation, I suggested that consideration should be given to reviewing the retention of young people's DNA data and fingerprints once they reach 18, so that they might be given an opportunity to enter adulthood with a clean slate. This decision would, of course, be dependent on the seriousness of the crimes committed and the number of offences for which they have been convicted. However, I recommend that particular consideration be given to this proposal where children or young people have been arrested for or charged with minor offences or have been convicted for the first, minor offence.
506. The proposal to grant an extension to the retention period for DNA and fingerprints will require very careful monitoring and regulation. If a court grants an extension for the retention of the DNA of a child or young person who has been charged but not convicted, this creates the impression that doubt and suspicion remain regarding their innocence, further stigmatising them. It also contravenes article 40 of the UNCRC. The Bill, as drafted, indicates that the person from whom the material was taken may appeal against an order to extend the retention period, so careful consideration should be given as to how a child or young person would be supported to undertake such an appeal. Appropriate and effective mechanisms should be put in place to enable them to pursue this.
507. The proposals in the Bill mean that many young people will enter the criminal justice system and be given a criminal record. I strongly believe that, wherever possible, the Government should actively seek to divert young people away from the criminal justice system, because contact with that system clearly has an adverse impact on young people's lives, potentially impacting on their physical, mental, emotional and social development, and creating significant challenges to their ability to reintegrate into society.
508. In conclusion, I believe it is crucial that the key human rights principles of proportionality, necessity and presumption of innocence strongly underpin the Bill's provisions regarding the retention and destruction of DNA profiles and fingerprints. While recognising the potential value of such material as intelligence and evidence tools, that has to be balanced against the extremely personal nature of the data. Consideration must be given to the potentially negative implications of retaining that information, particularly when it impacts on a child or young person's privacy and safety, and leads to their coming into contact with the criminal justice system. The special status of children and young people should be taken into account, and their protection should be identified as a key priority.
509. **The Chairperson:** Thank you very much, commissioner. Hopefully, members will not repeat some of the earlier arguments and you will be saved from an onslaught. I want to pick up on a couple of points. First, you highlighted the fact that you are concerned about this applying to 10-year-olds. If it is going to apply to children under 18, what is an appropriate age?
510. **Mrs Lewsley-Mooney:** I suppose you are getting into the argument about the age of criminal responsibility. We believe that 10 is far too young for this. How are you going to ask that child for permission? Are you saying that, at 10 years of age, the child understands the situation, what you are asking them and the permission that they are giving? You need to take that into consideration.
511. **The Chairperson:** The point I am trying to make is this: can you envisage us introducing a different age of 12 or 14 for this while 10 remains the age of criminal responsibility? My natural logic dictates to me that if 10 is the age of

- criminal responsibility, it is also the appropriate age for the retention of this information. Is there any justification for departing from that thinking?
512. **Ms Colette McIlvanna (Northern Ireland Commissioner for Children and Young People):** There are issues with asking a 10-year-old to consent to something as serious as having their DNA taken and potentially retained. We know, through research and experience, that a large proportion of young people at the top end of the spectrum who interact with the criminal justice system have their own needs because of learning disabilities or mental health difficulties. So, the capacity to consent is an issue not just for 10-year-olds but for 17-year-olds and 18-year-olds at the top end of the spectrum. That issue also needs to be addressed.
513. **Mr A Maginness:** Welcome back to the Assembly, commissioner. We heard from the Children's Law Centre. It seems, from your submission, that you are on all fours with what it is saying. Is that correct? In fact, you reflected what the chief commissioner of the Human Rights Commission said: this is about proportionality and getting the balance right.
514. In summary, just to make it very clear, children who have not been charged with any offence should not have their DNA or fingerprints retained.
515. **Mrs Lewsley-Mooney:** Yes. That is an absolute.
516. **Mr A Maginness:** That is an absolute as far as you are concerned. For those who have been cautioned, are you saying that there may be some circumstances where that could be retained?
517. **Mrs Lewsley-Mooney:** I think there would have to be exceptional circumstances, but we have the same concerns as previous speakers around cautions now being included in this. Our understanding is that a caution, particularly for a young person, is a route to ensure that they are diverted away from the justice system. So, to retain their DNA under any circumstances is, I suppose, a counterargument to that.
518. **Mr A Maginness:** Let us leave cautions and move on to people who have been charged and then convicted. Do you accept that their DNA and fingerprints should be retained?
519. **Mrs Lewsley-Mooney:** I think that, again, it has to be proportionate, depending on what the conviction is. If that is to be extended, young people need to be given an opportunity to appeal that decision and to be supported through the process so that they have a better understanding of why that is being done.
520. **Mr A Maginness:** Yes, and that reflects the position of the Human Rights Commission. I put it to the Children's Law Centre that there may be circumstances when the retention of DNA and fingerprints may be of assistance when either is discovered at a criminal locus. In that situation, the identification of those young people may be helpful in order to protect them. Have you any comment on that?
521. **Mrs Lewsley-Mooney:** My worry is that that is a presumption. The example that you gave was that this could have been an innocent young person caught up with people who were less than innocent.
522. **Mr A Maginness:** Yes.
523. **Mrs Lewsley-Mooney:** The issue then is that, if those DNA and fingerprints are retained, it may go to the opposite end of that, so they could be convicted.
524. **Mr A Maginness:** No, I was suggesting that that may well be a warning to the police. Here are youngsters who have found themselves in a vulnerable position where there are criminal elements intent on doing them harm and that they, in fact, may be rescued or assisted in that situation. That is the point I was making. It is probably an extreme situation; nonetheless, you have to take it into consideration as well.
525. **Ms McIlvanna:** We appreciate that it would be in extreme circumstances.

I suppose what we are saying in our constant call for joined-up working in connection with children is that it should not be down to the police to make that link. The other services available to children through social services, family networks and schools should have identified that issue in advance of leaving it to when the horse has bolted and the police then have to DNA-swab a scene to find out whether a child is there. We would hope that there would be more early warning systems to allow that to pertain.

526. **Mr Lynch:** Commissioner, you outlined concerns in your opening statement. You said that very few of them had been addressed in the Bill. Do you think that the Bill has got the issue right in relation to the protection of children?

527. **Mrs Lewsley-Mooney:** No, we would have liked the Bill to have gone further than that, particularly, as was mentioned, on the issue of cautions, retention and the differences around the reasons why DNA and fingerprints would be kept. The other issue for us is around the presumption of innocence. I am afraid that at times that could be that, as I said with regard to article 40 of the UNCRC, the retention of the DNA would presume that they are going to be guilty in the future rather than innocent now and probably innocent in the future.

528. **The Chairperson:** In hindsight, we should have put you with the Children's Law Centre. However, thank you very much.

529. **Ms Lewsley-Mooney:** Thank you.



## 4 October 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Easton  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

### Witnesses:

Mr Colin Caughey *Northern Ireland Human Rights Commission*  
 Professor Michael O'Flaherty *Rights Commission*

530. **The Chairperson:** I welcome to the meeting the chief commissioner, Michael O'Flaherty, and Colin Caughey, a policy worker from the Northern Ireland Human Rights Commission (NIRHC). Again, this evidence session will be recorded by Hansard and the transcript published in due course. I will hand over to you to make your initial comments.
531. **Professor Michael O'Flaherty (Northern Ireland Human Rights Commission):** Thank you very much, Mr Chairman. It is a great pleasure to be here. This is my first time in front of the Committee, and we are grateful for the invitation.
532. Given that this is my first time before you, I will briefly mention that the Northern Ireland Human Rights Commission is a statutory body with a duty to reflect to you not liberal or illiberal positions but what the human rights standards that bind the United Kingdom say to the various dimensions of your work. In that regard, the sole basis for our comments today are the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child, all of which have been ratified by the United Kingdom and which, therefore, bind the state.
533. My second preliminary observation is that there is much in the Bill to welcome. In broad terms, it is good legislation. It is good in that it will strengthen the criminal justice system in respecting victims' rights. There are two dimensions of the Bill that we will not talk about today — you have not asked us to speak to them — but I would just like to flag them up in general terms. We strongly support the elements of the Bill that deal with the combat of human trafficking. That is a major advance in law, and we think that strengthening criminal accountability for trafficking is one of the Bill's important achievements. Although we think that more is needed to deal with human trafficking, what is in the Bill is important.
534. Secondly, we welcome the provisions on the denotification procedure for sex offenders, because, again, we think that the drafters have come up with a good balance between the stability and safety of the community, the rights of victims and the rights of people who have spent sentences.
535. I will now turn to the issue of DNA profiles and fingerprints. I will not say anything about children, because the Children's Law Centre covered that, and I do not think that I have much to add beyond what you discussed back and forth. Let me focus on adults. In my comments, I will distinguish between convicted adults and unconvicted adults, because the issues for each are different.
536. First, where convicted adults are concerned, the proposal in the Bill is for the presumption of indefinite retention of DNA data and fingerprints. That really is unnecessary. I think that it is important to keep that in mind. That part of the Bill is about correcting a situation in the United Kingdom on the basis of the Marper case in Strasbourg,

- which dealt with unconvicted persons. In other words, anything that the Bill does on the business of convicted persons is not an implementation of the Strasbourg judgement but a choice by you to go further. In going further, I suggest that the Bill is going too far, because of the indefinite retention dimension.
537. The European Court of Human Rights has been very clear on that in a number of cases, one of which was a Dutch case from 2009. In that case, it ruled that, when you are talking about convicted persons, you have to demonstrate the application of the principle of proportionality in each case where such data are retained. In other words, of course it is legitimate to retain that stuff, but for that to be done, you have to exhibit a proportionate action in light of the convicted person's right to privacy.
538. I will just illustrate that point. Think of the difference between the woman who has been locked up for not paying her television licence and the multiple murderer. Is anyone, for one minute, suggesting that the data-retention rule should be the same for the TV licence person and the murderer? That would seem to me to be a very strange situation. In other words, it would not be proportionate. We are not asking that such data not be retained; we are not saying that the solution to indefinite retention is no retention. That would not be compatible with proper justice and policing. We are asking that there be a clear, straightforward process whereby an aggrieved person can make a complaint to a court. That is missing from the Bill right now. There is no mention of it in the Bill, but we have investigated it. The current situation is that if you are unhappy with the retention of your data, you can apply to the Chief Constable, who can then, through an internal police administrative procedure, determine whether they will be retained. Judicial review is the only appeal to what the Chief Constable may or may not decide, based on an entirely internal administrative process. It is also one of the least efficient and most expensive ways to get justice, so we are saying that a simple procedure of applying to a lower court should be there as the safeguard. That is our concern about convicted persons.
539. There is a general presumption in the Bill for the destruction of unconvicted persons' data. That is good. It means that the initial basis and attitude of the state as reflected in the Bill is that if you are unconvicted, we do not have any business holding on to your private information, such as your DNA profile and fingerprints. However, we have concerns, because the presumption of retention is set aside if there are certain prescribed circumstances that mean that the material should be held. You discussed that just a moment ago. Again, we do not challenge that. We accept that there will be certain circumstances in the interests of public safety and public order under which even the data of unconvicted persons can be retained. That is not at issue, nor is the idea that the Bill would set out the prescribed circumstances. The problem, however, is that it does not set them out. As we heard a few moments ago, that is to be left to an order that is to be drafted by the Department. That means that you, in determining on this Bill, do not know whether it will violate human rights in its application, because you do not know what the prescribed circumstances are. Some of them may be entirely acceptable from a human rights point of view, and others could putatively raise problems of a violation of human rights. That is what we are concerned about.
540. Again, the correction would not be difficult. It is not about abandoning the Bill; it is just about insisting that the prescribed circumstances are listed in it so that you will know what you are allowing when you approve it.
541. By the way, when I talk about human rights, the two that are uppermost in my mind that need to be protected are the rights of privacy and the presumption of innocence.
542. We have a secondary concern about the role that is to be played in the



- determination for the retention of DNA material or information or identity material. That is about the role that the biometric commissioner will play. We have no problem with the appointment of a biometric commissioner, as it could make for a more efficient operation of the state, given that we cannot go to the courtroom every single time. However, we need guarantees in the legislation that the biometric commissioner will carry out his or her responsibilities in a manner that is compliant with the human rights obligations of the United Kingdom. We assume that the office holder would do so, but we think that there should be a statutory statement to that effect.
543. I will leave my introduction there. We had a few points to make on children, but, if you will allow me, I will leave those be. Paddy Kelly has spoken very clearly on the situation of children, and the Children's Commissioner is following us, so we thought that perhaps the best use of your time would be if you engaged with us about adults. Thank you.
544. **The Chairperson:** Are there any circumstances under which you believe that the indefinite retention of DNA is appropriate?
545. **Professor O'Flaherty:** Of course. It is appropriate when, in the case of a convicted person, an appropriate authority such as a court considers that it should be retained in the interests of public safety, for example.
546. **The Chairperson:** Does that mean indefinitely?
547. **Professor O'Flaherty:** Yes, but the individual should always have the opportunity — and we are saying that it should be in a court — to check that that is still a proportionate restraint on their human rights. Likewise, we are not saying that an unconvicted person's DNA material should never be held. Again, there will be certain prescribed circumstances where that makes sense. However, our concern is that we need to articulate the prescribed circumstances, and we need to clarify the process by which a person can challenge that.
548. **The Chairperson:** I have heard the comment that judicial review is the expensive way of doing things, but is that not ultimately a policing decision? If the Chief Constable decides on the issue, should it not be a matter of challenging the process that he has followed, rather than having the courts deal with it?
549. **Professor O'Flaherty:** This is not written up anywhere, so we had to investigate it, and if I misstate it, I express regret in advance, but I think that I have the gist of it. There is a practice among Chief Constables of the United Kingdom that this is administratively organised as an internal police matter, meaning that you can apply to a chief constable to have your material destroyed. That chief constable, applying criteria that I have not had access to, will then make a determination on whether the material will be destroyed. My understanding is that there have been a few instances of that happening in Northern Ireland. I am not aware of a single case where an aggrieved person came out of that and then went to the court. I do not have that information. Our sense is that it has not happened, but I stand to be corrected if that is not accurate.
550. We just want a simpler, more straightforward procedure. We want a procedure whereby the court or, in the first instance, the biometric commissioner — that would be OK — has a clear, well-publicised and laid out step-by-step process through which the aggrieved person can make a petition that will be assessed according to clear criteria so that an answer comes down. Based on that answer, if it continues to be negative, the person should have a route not into the High Court but into a lower court, where the costs are lower and the whole proceeding is more efficient, straightforward and speedy.
551. **The Chairperson:** Earlier, you made a comment about a person who had a conviction for not paying a TV licence

- and a murderer. Can you show me where in the Bill they are both treated the same?
552. **Professor O’Flaherty:** Well, they are both convicted persons.
553. **Mr Colin Caughey (Northern Ireland Human Rights Commission):** They would both be considered as having committed a recordable offence.
554. **The Chairperson:** Yes, but is there a proportionate approach to the retention of DNA in both cases?
555. **Professor O’Flaherty:** There is no proportion. Under the current provisions, the DNA information on both persons will be retained indefinitely.
556. **Mr McGlone:** Thank you for your presentation. For a non-legal person, it is very useful to hear the issue explained in that way. You are drawing a distinction between those who are convicted and those who are not; is that right? I presume that you are saying that the retention of the DNA of those who are convicted should be graded according to the gravity of the offence for which they may initially have been convicted and their potential to reoffend. Is that where you are going?
557. **Professor O’Flaherty:** I will ask Colin to answer your question in detail. By way of introduction, I will say that we simply recognise that there is a qualitative difference between a convicted person and a non-convicted person. We recognise that it would be unreasonable to demand of modern-day policing that it should destroy its entire potential evidentiary base in the case of someone who has previously offended. With your permission, Colin will go into more detail on that.
558. **Mr Caughey:** We have taken into account the Council of Europe Committee of Ministers recommendation R(92)1 to which Mr Maginness referred earlier, which states that retentions are permitted only:
- “where the individual concerned has been convicted of serious offences against the life, integrity or security of persons”.*
559. On that basis, we suggested that the Department should consider a graduated length of retention according to the seriousness of the offence, possibly with indefinite retention in the case of a serious offence. We have also suggested that, were that to be investigated and it was felt that it was not appropriate, there should be the possibility of a right of an individual who is subject to indefinite retention to apply to the court or another body.
560. **Mr McGlone:** I just want to be clear about the circumstances where there has not been a conviction. What are you saying in that case?
561. **Mr Caughey:** Where there has not been a conviction, we are saying that the basis on which samples can be retained needs to be clearly laid out in the Bill.
562. **Mr A Maginness:** I want to follow up on the latter point. You have referred to this as “prescribed circumstances”. You are not here as a potential legislator, but in your view, or the commission’s view, could you outline what you might consider to be reasonable terms for prescribed circumstances. Have you any assistance to give us in relation to that?
563. **Professor O’Flaherty:** Mr Clayton, who spoke to you before us, read out to you some of the examples that were delivered by the Department. Some of those are entirely acceptable.
564. Where a case is proceeding and where there may be intimidation of witnesses, and so forth, meaning that someone had to be let go unconvicted but there is a sense that they are still very much a suspect in the ongoing criminal investigation, that would be an eminently acceptable prescribed circumstance.
565. If I give you examples of unacceptable circumstances, I would not like to suggest for an instant that the Department is considering imposing those. For example, some kind of an ethnic profiling prescribed circumstance, whereby we will in future keep the evidence of all persons of an ethnicity because of some spurious notion that that ethnicity is more likely than

- another to commit a crime, would be intolerable. I am not suggesting for one moment that anyone is considering such a thing, but until you enumerate those circumstances, you run a risk that in some future time something unpleasant of that nature could at least be allowed to happen.
566. **Mr A Maginness:** Have you parameters for the Department in relation to prescribed circumstances? I understand the one where there is continuing investigation or a trial taking place.
567. **Professor O’Flaherty:** The parameters can be derived from the international standards, one of which is presumption of innocence. So, any prescribed circumstance that would impute to an innocent person some suggestion of guilt would be unacceptable. Any parameter that engaged in such a violation of the principle of non-discrimination as ethnic profiling would be unacceptable. We can derive, from across the treaties that the UK has ratified, a number of walls around that, but the fact that they exist does not mean that leaving vagueness in the Bill is a healthy way to proceed.
568. The best guidance for human rights compliance we can give, the better and the more likely it is that we will avoid yet another case of going to Strasbourg, finding the UK in violation and, eventually, seeing a new Bill in front of you because it has to be brought into compliance.
569. **Mr A Maginness:** I already explained that if I were an innocent person, and DNA and fingerprints were taken from me, I would feel very resentful and stigmatised. My understanding of stigmatisation is that I would feel as if I have been branded and identified as somebody who committed some crime. I would feel very resentful about that. That will fester with any individual. With some people it may not. Mr Wells said that it does not faze him —
570. **Mr Wells:** Not in the least.
571. **Mr A Maginness:** But it may faze other people. Have you any views on stigmatisation? As I understand it, the word “stigma” is a marking out of a person.
572. **Professor O’Flaherty:** I will ask Colin to speak on stigmatisation in a moment, but I did not use that word because I do not think that that is the issue. The issue is that your DNA profile is your private property. It is who you are. Unless you have committed a crime or there is some other reasonable reason for the state for interfere, and we are not challenging that, in normal circumstances your DNA profile belongs to you and it is nobody else’s business. That is the essence of the right to privacy.
573. It is the same as your house. We recognise that the police, in certain circumstances, have every entitlement to come into your house, but they do not have an open invitation to go in and out your front door. Colin will give you a more technical answer.
574. **Mr Caughey:** Stigmatisation is an individualised matter and it is about how the fact that their DNA is retained is interpreted by the individual. That is why we highlighted in our statement that there should be a right for an individual to apply to the courts. If that individual fears that the retention of their DNA profile and fingerprints is hampering their enjoyment of life and they feel stigmatised by it, they have that option. Those who have no difficulty with it will not exercise their right to apply to the courts, but those who feel stigmatised would have that facility open to them.
575. **Mr McCartney:** Michael said that at times there may be people who are not convicted until there are additional witnesses. Should there be provision for someone charged and acquitted of a serious offence so, therefore, that scenario of intimidation or if they have been through a jury trial or, you know?
576. **Professor O’Flaherty:** I am not quite sure of the situation for somebody charged, tried and acquitted. Colin, do you know?
577. **Mr McCartney:** The legislation states:

- “charged with ... but ... not convicted of”*
578. So, not convicted of —
579. **Professor O’Flaherty:** That is the same as acquitted.
580. **Mr McCartney:** “Acquitted” would give a sense that there has been a trial. “Not convicted of” could mean that there is not sufficient evidence, so you are released before it goes to trial.
581. **Mr Caughey:** In those circumstances, under the Bill, they would be permitted to retain the evidence for three years. We have looked into the proportionality of that. The UK Government provided evidence to the Committee of Ministers, following on from S and Marper, but I am not sure whether this Committee looked at that. The Committee of Ministers met last week. That evidence set out the basis upon which that is considered to be proportionate, and the Committee of Ministers effectively agreed with the Government research and has taken it on board. The evidence shows that the higher propensity for reoffending among those arrested but not convicted of a serious offence was present for three years, and then they had the equivalent propensity to that of Joe Public. On the basis of that Committee of Ministers ruling, it appears that that is proportionate.
582. **Mr McCartney:** The second point is that it can be retained for a period of three years, with an extension of two years available on application to the courts. You can use different words like “stigma” or “no entry when not required”. You can have a scenario in which a person is acquitted, their DNA is retained for three years, and then an application is made to retain their DNA. If that is granted, in many ways, in the eyes of a whole lot of people, that person could be nearly guilty.
583. **Professor O’Flaherty:** The problem is that there are very few absolute rights in human rights. Most rights are subject to limitation. The European Court, or, at least, the Committee of Ministers and the framework of the European Convention, suggest to us that holding the DNA of such persons for a limited number of years is proportionate and, therefore, is not a violation of rights, so we as a commission are not able to encourage you or suggest to you that there is any human rights argument to take a different approach on that.
584. **Mr McCartney:** I have a final point. Your written submission stated that perhaps the Committee might seek information from the Department as to how the retention of DNA material assists in the prevention of crime. Maybe we should ask the Department to outline how many cases have been solved because DNA was already in the possession of the investigators.
585. **Mr Wells:** I go back to my situation. DNA, fingerprinting, photographs — the whole works. As it happened, when the case got to court, it was a minor conviction. How are my human rights impinged? Why should I be feeling stigmatised by the fact that police still retain my DNA? What am I supposed to feel burdened about that I have not realised?
586. **Professor O’Flaherty:** First, are you the convicted person?
587. **Mr Wells:** I am, yes.
588. **Professor O’Flaherty:** So you have a criminal conviction —
589. **Mr Wells:** A very minor one.
590. **Professor O’Flaherty:** Your DNA material is being retained indefinitely?
591. **Mr Wells:** Quite rightly so, yes.
592. **Professor O’Flaherty:** If you were ever to be of the view, which you clearly never will, that that is not an appropriate action, you could apply to the Chief Constable.
593. **Mr Wells:** Why would I want to do that?
594. **Professor O’Flaherty:** It is entirely up to you. It is your human right.
595. **Mr Wells:** I would want to do it if I thought that I was likely to commit another crime. I would not want my DNA held in any databank because I would be likely to get caught, but why would

- anyone who is not intending to commit a crime be remotely worried about whether the DNA is collected and retained?
596. **Professor O’Flaherty:** I do not have to answer that question, Mr Wells, because we are simply suggesting that retention of DNA is perfectly acceptable in many circumstances but that there are certain circumstances in which a properly vested regulatory body of the state should make the consideration, on application of the person, of whether there is no longer a social need to retain it.
597. **Mr Wells:** What you do have to answer, as the commissioner, is why anyone’s human rights would be impinged by the fact that their DNA is retained after a crime.
598. **Professor O’Flaherty:** We are here to reflect to you not our opinions but what the international treaties that the UK has ratified say and what the regulatory bodies, such as the European Court, adjudicate under those bodies. In the S and Marper case, they gave clear guidance to the United Kingdom that it has to change its law. We are here as officers of the law to reflect it back to you, no more.
599. **Mr Wells:** At the time of my car accident, I applied for a British passport, as is my right. As part of that process, my photograph was taken. That has been retained by the authorities in the passport office and will be retained ad infinitum. As I keep applying, they will retain other photographs of me. What is the difference, as far as my human rights are concerned, between that and my DNA?
600. **Professor O’Flaherty:** In the context of a passport, there is a clear public order requirement to know who the bearer of a passport is, and the most reliable way of doing that is measuring a face against the picture.
601. **Mr Wells:** My picture looks nothing like me. It makes me look like a 17-year-old. I look wonderful, but we age, as you know.
602. **Professor O’Flaherty:** With regard to DNA and the criminal context, the public need to retain it will vary according to various circumstances and criteria, such as your likelihood of committing another offence and your involvement in an ongoing trial like the one that we discussed earlier. We are not suggesting that it need not, or should not, be retained. We are simply saying it is wrong to take an absolutist approach that fails to distinguish between the likes of yourself or the woman who did not pay her TV licence — and there are such people in jail in Northern Ireland, as you know — and a murderer. It does not seem to be a proportionate approach of the state to treat that person and a murderer in exactly the same way.
603. **Mr Wells:** As I have no intention of committing any further crime, I do not have to worry about what is retained. However, if I were thinking of committing a crime, I would be straight in to ask for it to be destroyed. That is the problem. Law-abiding citizens will not avail themselves of this, but the person who has something to hide will. You cannot answer that, and I understand that.
604. You also said that, in the eyes of the public, there would be a stigma attached to having a two-year extension to the retention of DNA.
605. **Professor O’Flaherty:** Those were not my words.
606. **Mr Wells:** They were the words of Mr McCartney.
607. **Mr McCartney:** They were not mine either.
608. **Mr Wells:** Somebody certainly said it. For the benefit of the record, an honourable Member suggested that it would stigmatise someone in the eyes of the public to have the two-year extension. Who would actually know that the application for an extension had been made? My understanding is that it would be an entirely private issue.
609. **Professor O’Flaherty:** We are not raising any issues or concerns about the matter of three years with a two-year extension.

610. **Mr Wells:** Who knows whose DNA is retained apart from the individual and the police? Who actually knows that?
611. **Mr Caughey:** The applications are made to a district judge. Whether they are taken in closed hearing is not clear from the Bill. That is from what I have been able to investigate so far. If they are in closed hearing, ultimately, it would not be public.
612. **Mr Wells:** How could there be a public stigma if nobody, apart from you and the authorities, knew that there was either the original retention of the DNA or an extension?
613. **Mr Caughey:** If it is a closed hearing — we are not certain at this point whether it would be — it would be a private matter, but the state would hold that information.
614. **Professor O’Flaherty:** Also, we, as the Human Rights Commission, are not competent to get involved in psychological speculation. That is just not our competence.
615. **Mr Wells:** I am speechless.
616. **The Chairperson:** That is a first.
617. **Mr A Maginness:** It is the first time in your life.
618. **Mr Wells:** I realise why you are here. Do not presume that because this has been foisted upon us by the European Court of Human Rights, we agree with it. Simply because it has come from a judge in Azerbaijan or somewhere does not mean that we in Northern Ireland accept that it is right. Although we may have to accept that it will be imposed on us, that does not mean that we accept the principle on which it is based.
619. **The Chairperson:** From your organisation’s perspective, the issue with this judgement was the indiscriminate blanket approach that was taken. This now makes distinctions between those who are convicted and those who are not convicted; there is a difference of approach. The issue that you are highlighting now is this: if a person is convicted, where is the proportionality between a non-payer of a TV licence and a murderer? However, this Bill moves us on from the indiscriminate approach that was applied to everybody, whether convicted or not. Having moved away from that indiscriminate, blanket approach, surely we are meeting a test that is required of the state to comply with that judgement. From your point of view, the issue is whether it is fully compliant with the exemplars of best human rights practice?
620. **Professor O’Flaherty:** No. Whether some members of the Committee feel a detachment from the international obligations or not, we want to avoid the UK being hauled in front of the European Court of Human Rights. Our concern is that by treating the situation of a convicted person in the manner that this Bill does, the UK — or at least Northern Ireland in the context of the Bill — is, based on evidence from the European Court, going too far. There have been recent cases in the European Court that had nothing to do with the UK. As I mentioned, there was a Netherlands case in which the court was very clear that you could not take a blanket approach to convicted persons and that you had to look at the individual circumstances to meet the test of proportionality. That has not been taken into account in the Bill. We suggest that the Bill sets us up for future trouble with litigation.
621. **The Chairperson:** OK. Thank you very much.
622. **Mr A Maginness:** Before the chief commissioner goes, I want to say something in relation to what Mr Caughey said. As I understand it, the British Government gave evidence to the Council of Ministers recently. There may be a transcript of that. Is that available?
623. **Mr Caughey:** Yes, we can provide that. It is available on the Committee of Ministers website. We can send that to you.
624. **Mr A Maginness:** That might be helpful.
625. **The Chairperson:** Thank you very much.

# 11 October 2012

## Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Stewart Dickson  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr William Humphrey  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

## Witnesses:

Mr Mark Baillie      *CARE in Northern Ireland*  
 Dr Dan Boucher

626. **The Chairperson:** I welcome Dr Boucher, who is director of parliamentary affairs, and Mark Baillie, who is the public affairs officer at Christian Action Research and Education (CARE) in Northern Ireland. You are very welcome to the meeting. As usual, this session will be recorded for the Hansard report and will be published in due course. I invite you to make your presentation to the Committee, and then we will have some questions.

627. **Mr Mark Baillie (CARE in Northern Ireland):** Thank you very much for your invitation to come before the Committee. It is a real privilege for us to present evidence on this very important issue. I am CARE in Northern Ireland's public affairs officer. This is Dr Dan Boucher, who is CARE UK's director of parliamentary affairs. Before we start, if there is any issue on which we do not have the information or there is any question that we cannot answer, we are quite happy to write to the Committee outlining more detail.

628. We are going to consider two issues today. The first is a technical issue about the differences in how England and Wales are seeking to comply

with the EU anti-trafficking directive in comparison with Northern Ireland. The second issue is that, although we believe that clauses 5 and 6 of the Criminal Justice Bill are excellent legislative changes and we are very positive about them, in our opinion, they do not go far enough in seeking to fulfil the requirements of the directive. I will hand over to Dan to explore that further.

629. **Dr Dan Boucher (CARE in Northern Ireland):** Thank you very much indeed. Starting with the first, more technical, issue, we distributed a chart to aid explanation. I do not know whether members have received it. Basically, there is obviously a significant virtue in considering doing things differently, but the benefit of doing exactly the same thing in different ways is less immediately obvious, especially when it leads to legal complexity. When considering vulnerable people who have been trafficked, it would seem good to us to try to keep things as simple as possible. The differences between the way in which Northern Ireland is proposing to make the changes to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the way in which England and Wales propose to make those changes basically mean that there will be greater legal complexity within the UK, but without any really substantive, significant difference. We are just bringing that to the Committee's attention for the very simple reason that we think it is a question worth asking of the Department and seeking clarity on. There may be a very good reason, but it is not immediately obvious to us what that is. If there is not a very good reason, we will draw attention to the fact that it means that we are largely accomplishing the same thing as England and Wales are accomplishing but in a different way, which means that the law will be more complicated. I guess that would probably be good news

- for lawyers and bad news for trafficked people who might have to engage with the law in different parts of the UK.
630. You have a copy of the chart that we circulated earlier. Essentially, the provisions of the Sexual Offences Act 2003 — the law at the moment — that apply are in sections 57, 58 and 59. In Northern Ireland, the proposal is to keep those three offences and to add an additional one in a new section 58A. In England and Wales, the proposal is to scrap the existing sections 57, 58 and 59 and create a new offence in a new section 59A, which would incorporate the new offence of trafficking outside the UK for exploitation.
631. Exactly the same principle applies to subsections (1), (2) and (3) of section 4 of the Asylum and Immigration Act. In Northern Ireland, the proposal is to keep those subsections and add 4(3A) to deal with facilitating movement in a country other than the UK for exploitation, whereas the approach in England and Wales has been to scrap 4(1), 4(2) and 4(3) and create an entirely new offence at 4(1A), which incorporates the new offence of trafficking outside the UK. As I said, there may be a very good reason for doing that differently. We just suggest that the Committee should press the Department to find out what that reason is. If there is not a good reason, it is just going to generate additional complexity with no added value, and that could be difficult for trafficked people who have to deal with the law in different parts of the UK.
632. I will move on to the second main point that we want to make. The Criminal Justice Bill has been spoken of as a vehicle for helping to make Northern Ireland compliant with the EU anti-trafficking directive. Initially, the decision by the UK Government was not to opt into the EU anti-trafficking directive. That decision was made in June 2010. There then followed a significant public campaign to persuade them to change their minds, which they did in March 2011, but, of course, encouraging a Government to opt in is only half the battle. One also has to encourage proper implementation.
633. In January this year, the Government in England and Wales announced the two changes that they considered to be necessary in order to make themselves compliant, and that involved the creation of an extraterritorial offence and an offence of trafficking internally within England and Wales. Many charities were very concerned about that, because it seemed to fall a long way short of what was mandated by the directive. We are very conscious that what a directive mandates and what one has to do in order to avoid infringement proceedings are not necessarily the same thing, but, if we are committed to trying to tackle human trafficking and putting in place the very best legislative framework possible, it seems very unfortunate to us that the Government in England and Wales seem to be going for a minimalist approach to compliance. We were very interested to see that Northern Ireland was told that it could do its own thing. We had great hopes that, rather than going for a minimalist approach, Northern Ireland might go for a more maximalist approach, thus taking the opportunity to put Northern Ireland in the driving seat as a model of best practice within the UK and beyond. We were therefore disappointed when the Criminal Justice Bill was published, because, essentially, it mimics almost exactly what England and Wales are proposing to do.
634. We are aware that it is possible that additional changes may be made through secondary legislation. However, in our view, if you look at all the things that are mandated by the directive but are not addressed by the Criminal Justice Bill, you can see that, although some of them could be addressed by secondary legislation, quite a few of them could not be and would need to be implemented by primary legislation. I will go through them very quickly. Articles 2(1) and 2(4) of the European directive deal with the extension of the definition of exploitation to include forced begging and making the provision



- for consent to be trafficked irrelevant in the context of coercion, threats and fraud, etc. That is not addressed by the Bill. Similarly, article 4(2) of the directive requires the setting out of aggravating factors to increase the penalties given to people guilty of trafficking. That is not in the Criminal Justice Bill. Article 12(4) of the directive deals with special measures to help victims who are testifying. Incidentally, in its report of 12 September, the Group of Experts on Action against Trafficking in Human Beings (GRETA) underlined the importance of addressing that. Again, that is not in the Bill.
635. Article 9(1) of the directive, which looks at the issue of helping investigations and proceedings to improve the number of successful convictions, makes provision for cases to be taken even when the accusation is not made by the victim or when a victim withdraws their statement. No provision is made in the Bill for article 9(1).
636. In articles 9(3) and 9(4) of the directive we see requirements for more resources for effective investigation and prosecution. Provisions are made in that regard at the moment, but they are not in statute. As such, they are vulnerable to cuts should a future Administration want to change their approach, which they would not be able to do easily if that were backed up by statute. The GRETA report of 12 September underlined the importance of that and the need to increase training across the board. That is not in the Bill.
637. Article 11 of the European directive deals with assistance for victims. Assistance is made available at the moment but not on the basis of statute, so it is vulnerable to cuts. GRETA made recommendations on the need for clear standards to help with assistance for victims of trafficking.
638. Articles 14(2) and 16(3) of the directive give a choice to member states to make provision for trafficked children through a guardian or representative. It is generally understood that “representative” provides a lower level of care than “guardian”. So, member states are given a choice between a maximal approach to implementation and a minimal approach. The Government in England and Wales have deliberately chosen to go for the minimalist approach, which is very unfortunate. That would seem to be the case here as well, because no provision is made for child trafficking guardians in the legislation before us.
639. Article 19 makes provision for a national rapporteur or equivalent mechanism. The idea behind a national rapporteur is that it is a body that is completely independent of government with a role to assess what is happening in a country in relationship to trafficking so that one can assess objectively whether anti-trafficking policy is working. The body should produce public reports. No provision is made for that in the Bill. The Government in England and Wales would claim that the interdepartmental ministerial group on human trafficking provides that function for the whole of the UK, including Northern Ireland. The difficulty with that assertion is that the whole idea of a national rapporteur is that it is supposed to be independent of government and not an inter-ministerial government committee, which, by definition, is at the heart of government. Until very recently, that body did not produce reports, which is a core function of a national rapporteur. Perhaps in the context of feeling vulnerable about that, the Government in Westminster have just announced that the group is about to release its very first report. However, it will not be a report that is objective and independent of government, and, therefore, it fails the test of a national rapporteur as far as we are concerned.
640. That concludes our speedy overview of the points that we want to make. Obviously, we will be delighted to answer any questions.
641. **The Chairperson:** OK. Thank you very much for that. We have the written submission that you kindly provided to the Committee. I note that you reference Lord Morrow’s Bill in a lot of areas where you think this Bill could be strengthened.

- Has Lord Morrow's draft Bill covered all the areas in which you believe the legislation could be improved?
642. **Dr Boucher:** It does not cover the issue of national rapporteur but, in other respects, yes, it does.
643. **The Chairperson:** That is fine. I do not have any more detailed questions because you covered them all in your written submission. The Department responded to Lord Morrow's Bill, which members may not yet have had an opportunity to digest. I am happy that we ask it to respond explicitly to all your recommendations because they seem reasonable.
644. **Mr Wells:** Are you basically saying that you believe that Lord Morrow's Bill deals with this issue more effectively than the Department's proposals deal with it?
645. **Dr Boucher:** It is very important to be clear that the two provisions in the Criminal Justice Bill are, in our view, excellent. There is the query about why there is a difference of approach, but what they accomplish is thoroughly good, so we do not want to criticise them. We are just saying that they do not go far enough and that Lord Morrow's Bill completes the gap, if you like, between full implementation of the directive and what is manifest at the moment in the Criminal Justice Bill.
646. **Mr Wells:** I want to ask a question flowing from that. You do not have to answer this question, because I realise that it has been bounced upon you. One of the major provisions of Lord Morrow's Bill is that it will follow the Swedish model and make it illegal for people to purchase sexual services. There is a fair bit of debate on both sides as to whether that works, though the Swedish statistics show that it has certainly led to a reduction in the amount of trafficking. Do you have a view on that?
647. **Dr Boucher:** Article 18 of the European directive asks member states to look at ways of reducing demand for trafficking. It clearly does not ask them to criminalise paying for sex, so, in that regard, Lord Morrow's Bill goes beyond the directive, but his Bill, as I understand it, is not designed to narrowly implement the directive in a fulsome way, although it does have that effect. In regard to clause 4, it goes beyond what is directly mandated by the directive. We welcome that provision.
648. The figures show that the main reason why people are trafficked to Northern Ireland is for paid sex, and one could argue that an anti-trafficking Bill that does not address the whole issue of the demand for paid sex in that context could be described as an anti-trafficking Bill with a bit of a hole in it. We very much support the provision. As you say, the evidence from Sweden and Norway clearly demonstrates a reduction in prostitution. We see that as something that is very positive and, as you alluded to in relation to trafficking, it has a direct knock-on effect. The police in Sweden have intercepted phone calls between traffickers saying that they have got some women and asking where to send them, and they are being told not to send them to Sweden because there is absolutely no point. The legal environment in Sweden is so hostile to the notion of paying for sex that you would be better off sending the women elsewhere.
649. **Mr McGlone:** I would like a bit of clarification. Essentially, are you saying that elements of the Bill are really cut and pasted from England? Did I hear you saying that earlier?
650. **Dr Boucher:** Elements of the Criminal Justice Bill, not the Morrow Bill.
651. **Mr McGlone:** No, I was not referring to that.
652. **Dr Boucher:** They are not exactly the same. They achieve the same thing but in a different way. One of the points that I was seeking to make at the beginning is that, although there is great benefit in doing things differently — the whole burden of the second part of my comments was to suggest that Northern Ireland should go further than England and Wales — if you are accomplishing exactly the same thing but in a different

- way, that creates legal complexity. We are thinking about vulnerable people having to navigate the law in different parts of the UK. We are just asking whether there is a good reason for that. There may well be a very good reason for that. We are just asking the question and suggesting that it would be good for the Committee to press the Department to find out what that reason is, and, if there is not a really good reason, to suggest that perhaps doing it differently is not necessarily helpful.
653. **Mr McGlone:** Secondly, you said earlier that a lot of the EU directive was just not incorporated into the Bill. Following on from the references to Lord Morrow's proposals, are you satisfied that his proposals — I have not gone into them in any detail, so I cannot speak with authority on them — would in fact fill that gap? In other words, do they cover all elements of the EU directive that you are suggesting should be incorporated into the Bill?
654. **Dr Boucher:** They do, with the exception of the national rapporteur.
655. **Mr Baillie:** The national rapporteur is not mentioned in Lord Morrow's Bill. That may be something that it might be advisable to add to it, but, currently, there is no mention of it in Lord Morrow's Bill.
656. **Dr Boucher:** It is important to stress, as I did, that doing everything that is mandated by a directive is not necessarily the same as doing everything that you have to do in order to avoid infringement proceedings. Setting clause 4(2) aside for a moment, we would not try to argue that, if Northern Ireland does not do everything that is in the Morrow Bill, plus have a provision for a national rapporteur, it would necessarily find itself facing infringement proceedings. We are saying that we are addressing an area of real human need and that this is a great opportunity for Northern Ireland to put in place robust and progressive legislation, rather than having a minimalist approach to implementation. This is an opportunity to put in place the very best legislation and become a model of best practice in the UK. Rather than copying and mimicking London, Northern Ireland could set the pace and provide a more progressive and caring legislative framework for the victims of trafficking, and a more aggressive framework for dealing with the perpetrators of trafficking.
657. **Mr Baillie:** The Morrow Bill, in our minds, provides a great opportunity to lead the way in the UK. Frequently, Northern Ireland just follows behind the UK Government. This is an absolutely fantastic opportunity to push forward to support some of the most vulnerable people who come to Northern Ireland. That is why we are backing the Bill so strongly.
658. **Ms McCorley:** Thank you for your presentation. What are the greatest omissions in the Bill? What provisions would make a difference if they were in the Bill? The Department seems to be saying that it will not introduce a national rapporteur because the inter-ministerial group fulfils that function. As we know, however, that group would not be independent of government. How important do you think it is to insist that a national rapporteur be put in place?
659. **Dr Boucher:** I do not know that there is a scale to show that this omission is hugely more important than the others. Taken all together, they make a very valuable package. It is an interesting question; I have never thought of trying to create a scale to show which is the most important. I tend to think that it is quite difficult to make a sliding scale of the least important to the most important. I will, perhaps, go away and reflect on that, if I may. However, they form a package of provisions that, together, would really help to enhance the law in Northern Ireland.
660. I suppose that the provision for guardians for trafficked children is a particular area of concern because of trafficked children going missing. This would be a great opportunity for Northern Ireland, particularly because UNICEF has defined the terms of

reference for child trafficking guardians, who should not be confused with guardians ad litem, who are different. People sometimes confuse the two. No other part of the UK has put in place legal provision for child trafficking guardians. To do so, which the Morrow Bill does, and very cleverly and well in our judgement, would really put Northern Ireland at the cutting edge of the legislative framework for helping the most vulnerable of all trafficked people, namely children. It is bad enough to be trafficked as an adult but to be trafficked as a child is probably — well, it is hard to conceive of a worse context within which to find oneself. Perhaps on that basis I may think about that, but, in a way, I am loathe to create a sliding scale because they are all important and they form a package.

661. **Mr Baillie:** We have seen examples of how effective the national rapporteur model has been on the Continent, particularly in Sweden. There is an independent framework, which gives the rapporteur much more strength in analysing how, for example, Sweden is implementing the law. That is really positive and has been seen to be so in Sweden. An inter-ministerial group is not independent at all. I would be very surprised if it could be anywhere nearly as rigorous as an independent national rapporteur could be. That is why we are keen to see that put forward as well.
662. **Mr Elliott:** Thank you for the presentation. I have one brief question. You mentioned the extraterritorial jurisdiction issue and indicated that there will be a huge divergence between the jurisdictions in the United Kingdom. What is the answer to that? You have identified the problems, but you have not set out a solution.
663. **Dr Boucher:** There may be a very good reason why the Department of Justice has decided to go about achieving the same end as the Government in England and Wales have achieved but in a different way. We just do not know what that reason is. We are struck by the fact that it is so different. I guess that we are mindful of the fact that one of the

difficulties with dealing with trafficked people is their vulnerability. They often do not speak the language. If you bring in additional and needless complexity within the UK, it will probably be good news for lawyers but not great news for trafficked people, as they will have to negotiate different legal arrangements. We are just asking the question. We think that the difference is rather striking. If we were the Committee, we would really want to press the Department on that and ask it why it has chosen to do it differently from the way it has been done in England and Wales, given that it achieves pretty much the same thing but creates more legal complexity.

664. If the Department were proposing something completely different from what is being proposed in England and Wales, that would make more sense. There is a slight difference between the provisions in England and Wales and those in Northern Ireland, in as much as the Northern Ireland provisions do not include just UK citizens but habitual residents, too. The provisions in England and Wales do not include habitual residents. So, in that way, the Northern Ireland provisions are more robust. However, one could have grafted in habitual residents using the same framework that was employed in England and Wales, rather than going for an entirely different strategy in which you have four offences rather than one.
665. **Mr Elliott:** I do not want to put words in the gentlemen's mouths, but are they suggesting that it could provide legal loopholes for people to get away with some of the actions they take?
666. **Dr Boucher:** It might do, but that is not what drives our concern. What is driving our concern is the fact that we find it striking that the Department is doing things very differently from England and Wales. As I said, trafficked people are vulnerable, and it is helpful if the law can be as simple as possible. If you have different laws in different parts of the UK, it makes it a bit more complicated. As I said, if you are doing something different in a different way, that is fine, but, if you are doing exactly

- the same thing in a different way, it prompts this question: why? Maybe there is a very good reason. If, as a result of this conversation, you are able to press the Department and bring that very good reason into the public domain, it would be helpful. If there is not a very good reason, we suggest that you might want to go back to the Department and tell it that the net effect is that it is doing pretty much exactly the same thing as England and Wales but that it is generating complexity. That is not helpful, particularly as we are dealing with trafficked people who are vulnerable and for whom negotiation with the law is a challenge at the best of times.
667. **Mr Dickson:** Thank you for your submission. To follow on briefly from that, I think that you have asked a perfectly reasonable question, and we will need to seek clarification from the Department on why it proposes to do things differently. Of course, it may just be that Northern Ireland has a different legal framework.
668. On the island of Ireland, people are as likely to be trafficked from the rest of the United Kingdom as they are to be trafficked from an entirely different European jurisdiction. Will you comment on what the legal framework is? What concerns do you have about how the Irish Government intend to implement, or have implemented, the protocol on trafficking?
669. Secondly, Lord Morrow's Bill has many welcome points. However, one concern that I have is that it possibly regrettably obscures the purpose of the Criminal Justice Bill, which is to deal with trafficking. Prostitution is a separate matter and needs to be legislated for separately.
670. **Dr Boucher:** The question on Ireland is important. My recollection — it may not be accurate, so I will check — is that Ireland had the option of opting in or out of the EU anti-trafficking directive in the same way as the British Government because of the deal they negotiated with the EU. I am not sure whether they opted in or not.
671. **Mr Dickson:** Do you agree that it is important to ensure that trafficking in the Republic of Ireland is dealt with as robustly as it is dealt with here within the legal framework, given that we share a common border?
672. **Dr Boucher:** Yes. If the Republic did not have as robust legislation, I would still encourage Northern Ireland to put in place legislation that is as robust as it possibly could be. However, it would obviously be desirable for North and South to put in place legislation that is as robust as possible.
673. **Mr Baillie:** We would not want a scenario where there is a form of tourism, with people going across the border. That is not a good way to boost their economy, and I do not think that anyone would say that it is.
674. **Mr Dickson:** Indeed. We do not want to see trafficking sites in the same way as we see illegal fuel laundering sites.
675. **Mr Baillie:** Absolutely.
676. **Dr Boucher:** In response to the question about Lord Morrow's Bill, we would argue that prostitution and trafficking are inextricably linked. If you look at the figures, you can see that by far the greatest reason for trafficking is paid sex. As I said at the beginning, because of that, one could argue that to have an anti-trafficking Bill that did not seek to tackle the demand for paid sex — the principle driver for trafficking to Northern Ireland — would be a bit like having a trafficking Bill with a big hole in it.
677. **Mr Dickson:** But it does deal with it.
678. **Dr Boucher:** Yes, I know. In other words, I am saying that —
679. **Mr Dickson:** There is not a hole in it.
680. **Dr Boucher:** There is not a hole in it, which we think is a good thing.
681. **Mr Dickson:** But there are indigenous sex workers who are not trafficked, and we need to have laws to regulate that as well. There are overlapping circumstances.

682. **Dr Boucher:** We have produced a briefing on criminalising paying for sex, which we can, perhaps, let you have.
683. **Mr Dickson:** Is it wise to confuse the two areas?
684. **Mr Baillie:** I would not say that we are confusing the two. They are inextricably linked.
685. **Mr Dickson:** Lord Morrow's Bill has the potential to do that.
686. **Dr Boucher:** As our briefing demonstrates, in the first instance, the two things are inextricably linked for the reasons I described. In the second instance, if you look —
687. **Mr Dickson:** There is no hole in the legislation.
688. **Mr Baillie:** Can you clarify which piece of legislation you are referring to?
689. **Mr Dickson:** The proposed Bill.
690. **Mr Baillie:** The Criminal Justice Bill?
691. **Mr Dickson:** Yes.
692. **Mr Baillie:** We think that it does not go far enough.
693. **Mr Dickson:** But it deals with the issue of prostitution in trafficking.
694. **Dr Boucher:** The Criminal Justice Bill before us today does not address the demand for paid sex.
695. Secondly, a UN special rapporteur on trafficking said that prostitution involves abuses of power that are such that, as far as she is concerned, trafficking, as a definition, applies to people who are in that situation, regardless of whether they have been moved from one place to another.
696. **Thirdly, we do not deny that there may be some people at the higher end of prostitution who might say that they enjoy prostitution and find it a fulfilling career. However, you have a choice:** do you make the law on the basis of the vulnerable majority? The statistics on prostitution generally show links to suffering, class A drugs, sexual abuse of children in the home, starting in the profession when still a child, etc. In our judgement, when you see all that, it is important to frame the law out of primary regard for the vulnerable majority and not out of regard for what can sometimes be quite a vocal minority. We definitely think that jumping in that direction is the right way to go. Given the definition from the former UN special rapporteur, Sigma Huda, we would argue that even prostitution that has not involved moving someone from one country to another can be seen in the same frame of reference as trafficking.
697. **Mr Baillie:** It is worth adding that we are not trying to claim that this is perfect legislation. As you are well aware, there is no such thing. We just think that it is the best public policy option to take. We really encourage you to consider carefully the Swedish model and to see what you make of it. It is a serious option that is plausible and that could be workable in Northern Ireland.
698. **The Chairperson:** OK. Nobody else has indicated. Thank you very much.

# 11 October 2012

## Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Stewart Dickson  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr William Humphrey  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

## Witnesses:

Ms Helena Macormac *Northern Ireland Council*  
 Ms Karen McLaughlin *for Ethnic Minorities*

699. **The Chairperson:** I welcome the officials from the Northern Ireland Council for Ethnic Minorities (NICEM), in particular Helena Macormac and Karen McLaughlin. Again, this session will be recorded by Hansard. I will hand over to you to outline your submission to the Committee. I am sure that members will then have some questions.
700. **Ms Helena Macormac (Northern Ireland Council for Ethnic Minorities):** Thank you very much. First, I would like to start by thanking the Committee for inviting us to give evidence this afternoon on clauses 5 and 6 of the Criminal Justice Bill, which relate to human trafficking, based on NICEM's written submission that the Committee received in August this year.
701. I would like to briefly state who we are and why tackling human trafficking is a key element of our work. NICEM is an independent non-governmental organisation working to promote equality and human rights in Northern Ireland. As an ethnic minority-led umbrella organisation, we represent the views and interests of black and minority ethnic communities. We are also founders of the Belfast Migrant Centre, which provides direct client-facing services to vulnerable migrants. We believe that engagement with non-governmental organisations and, in particular, with ethnic minority-led organisations will help to ensure that legislative and policy decisions on the subject at hand are well informed and communicated effectively.
702. We were delighted that, during the Committee's discussion on 20 September this year, Department of Justice officials stated that the Department should not take a minimalist approach to the EU directive on preventing and combating trafficking in human beings and that it was energetically seeking to comply with the letter and spirit of the directive. With that in mind, and in addition to my colleague Karen's analysis of the specific clauses in the Bill, I will briefly touch on the prevention of human trafficking and the protection of trafficking victims, as it is only in conjunction with addressing those two elements, alongside the prosecution of traffickers, that the Department can be said to be taking a human rights-based approach. NICEM believes that the recent consultations by the Department and others, and the discussions and debates stirred by those initiatives, present a genuine opportunity for the Department to go beyond the minimalist approach and develop a dedicated human rights-based legislative and policy framework.
703. Building on work that NICEM has done over the past five years in campaigning for a human rights-based approach to be taken, we have, in conjunction with Professor Tom Obokata, a legal expert in human trafficking, developed a briefing paper providing an analysis of the current responses to human trafficking in Northern Ireland. We presented an advance copy of that to David Ford at a meeting last month. NICEM, as secretariat of the all-party group on ethnic minority communities, in

conjunction with Amnesty International, as secretariat of the all-party group on human trafficking, is organising a cross-party discussion on the findings in the presence of local and international experts in early November. We have provided each Committee member with a copy of the paper. I have that with me and can distribute it along with an invitation to the Chatham House rules discussion, in which we hope to address the issues of legislative and policy-based measures for a holistic human rights-based approach more broadly than we can today. With that, I will hand over to my colleague Karen, who will address the specific clauses.

704. **Ms Karen McLaughlin (Northern Ireland Council for Ethnic Minorities):** Thanks, Helena. As you are all aware, the Department of Justice's rationale for introducing clauses 5 and 6 is to comply with the EU directive on preventing and combating human trafficking. It is important to bear in mind at the outset that this is not only a matter of EU law but a question of international human rights law. The UK is a state party to the Council of Europe Convention on Action Against Trafficking in Human Beings and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, otherwise known as the Palermo protocol, as well as other instruments relating to violence against women and girls, and forced labour.
705. **A human rights-based approach, which Helena mentioned, requires a three-pronged approach, otherwise known as the three Ps:** prosecution of traffickers; prevention of human trafficking; and protection of trafficking victims. Clauses 5 and 6 deal with the first prong, the prosecution of traffickers, and, indeed, article 10 of the directive. However, legislative action is necessary to comply with the three Ps approach and the EU directive, which we referred to in our written submission. More specifically, given the similarities of clauses 5 and 6, we have identified three issues that are common to both provisions, namely

scope, definitions and penalties, which will now be addressed in turn.

706. First, in respect of the definitions, clauses 5 and 6 propose to criminalise the act of arranging or facilitating the movement of persons from countries into the UK as well as within the UK. Here the Bill diverges from article 2 of the directive, as that equates to criminalising only the transport of victims. The Council of Europe convention monitoring body, the Group of Experts on Action against Trafficking in Human Beings (GRETA), has expressed concerns about that shortcoming in its recent evaluation report on the UK's compliance with the convention, which was published in September this year. Therefore, we recommend that the words "arranges or facilitates" are replaced with the definition in article 2(1) of the EU directive. Due to time constraints, I will not read out that definition, but if you would like clarification, I can read it afterwards.
707. As well as those deficiencies, exploitation, although referred to in clause 6, is not defined in the Bill as it stands. In order to ensure that all forms of exploitation are covered, it is recommended that the definition of exploitation, as set out in article 2(3) of the directive, is adopted. In addition, according to article 2(4) of the directive, the consent of the victim shall be irrelevant where exploitation has taken place. The Bill as it stands is silent on that issue, and we, therefore, also recommend the inclusion of that element.
708. There are three reasons for recommending those changes to the definitions. First, the definitions that we are proposing appear not only in the EU directive but in the Council of Europe convention and the UN Palermo protocol. So, adopting those definitions is essential in order to ensure compliance with international human rights law obligations as well as the EU directive.
709. The second point relates to legal certainty. According to GRETA's evaluation, which was published in September, various offences related to human trafficking adopt inconsistent



- approaches and requirements as regards actions, means and forms of exploitation and do not fully reflect the definition of trafficking in the convention. However, we noted that, in the recent consultation by the Public Prosecution Service (PPS) on prosecuting cases of human trafficking, the Council of Europe convention definition was used. So we are concerned that both approaches in law and policy could impact on legal clarity and that, effectively, the definition of human trafficking could become the subject of judicial interpretation. I accept the point that that might present difficulties in amending the Sexual Offences Act 2003, which can only cover sexual exploitation. However, that difficulty in itself highlights the need for a single consolidated statute dealing with human trafficking, as that is a crime that does not respect legislative boundaries. My colleague Helena will come back to that point later.
710. Thirdly, we believe that a robust definition covering all elements of trafficking will help with law enforcement and aid prosecution, and it will also help with the identification of victims and offenders.
711. So, our second point is on the scope of the provisions. It is welcome that the offences have been extended to include persons habitually resident as well as incorporated bodies. In that regard, there is no definition of “habitual resident” in the Bill as it stands. We would also recommend that a clause be included to extend this offence to persons who may incite, aid, abet or attempt to commit the offence, in accordance with article 3 of the directive.
712. The final point relates to penalties. There has been much discussion about the length of sentences, and we have sent a submission to the recent PPS consultation on this matter. However, as the Bill stands, there is a clear omission from the penalties set out in clauses 5 and 6. Although incorporated bodies are included in the scope of the clauses, there are no specific company-law-related offences. It is, therefore, recommended that, in accordance with article 6 of the EU directive,
- specific sanctions for legal persons are introduced, such as judicial winding up and disqualification.
713. Having set out our concerns about clauses 5 and 6 of the Bill and our recommendations for amendments, I will now hand over to Helena to conclude our presentation.
714. **Ms Macormac:** A key recommendation of our briefing paper, our consultation response and our analysis of the discussion at hand is that there should be a single consolidated Bill. The complex and piecemeal nature of the current legislative framework makes it difficult for the relevant stakeholders to understand what is expected of them in implementing action against human trafficking. Although the Department contends that it has not encountered those working in the field finding the current regime imprecise, we believe that the proactive approach of addressing problems before they have an impact is the right approach. Trafficking was only recognised as a crime in Northern Ireland in 2007, therefore there are relatively few experts in the area, and many agencies are only just beginning to understand how to address the issue. A single statute could rectify problems by providing coherence and clarity. This is an approach that has been adopted by other common law jurisdictions with notable success.
715. The issues with the clauses clearly highlight the piecemeal nature of the legal framework. According to GRETA, the Council of Europe monitoring body, steps should be taken to:
- “address the consequences of having numerous pieces of legislation”*
716. on human trafficking. It points out that dedicated legislation would provide a legal status to victims of trafficking that reflects the human rights-based approach to action against trafficking. The fact that the actions to be criminalised in the Bill only refer to transport and that separate offences in separate pieces of legislation are to be created for different forms of

- exploitation unfortunately indicates that a human rights-based approach to action against trafficking has not been adopted. Therefore, rather than focusing on putting one section of the EU directive on a statutory footing, we reiterate the recommendations of GRETA and call on the Committee to legislate for a human rights-based approach to action against trafficking. We, therefore, call for a single, robust piece of legislation that addresses all elements of the offence of trafficking and provides for the protection of victims and the prevention of this heinous crime.
717. As time is restricted, I will not get into the additional points that NICEM would like to raise with the Committee in relation to obligations to protect victims and prevent trafficking. However, I have copies of the briefing paper containing our recommendations for further consideration, and we hope that members will consider our invitation to the Chatham House rules discussion on 14 November.
718. **The Chairperson:** Thank you very much. I just want to pick up on the issue of the single piece of legislation that you think is so critical. Why is that? Is there a fear that somehow prosecutions will not happen because the legal profession or the PPS or whoever will not be able to sift through various pieces of legislation? What is the real fear around not having a single Bill that brings everything together?
719. **Ms Karen McLaughlin:** When I spoke about clauses 5 and 6, the example I used was the definition of exploitation and the definition of the act of trafficking. The Sexual Offences Act 2003 does not have the scope to have an all-encompassing definition of exploitation, which includes:
- “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.”*
720. That is a quote from the directive. To our minds, that highlights the fact that
- some of those elements would be lost because of the piecemeal nature of the Bill. That is why we need a consolidated Bill that covers human trafficking as an offence and all the forms of exploitation that constitute trafficking.
721. **The Chairperson:** Have you responded to Lord Morrow’s Bill?
722. **Ms Macormac:** No, but we will do. We will be attending the event that he is organising next week. Our briefing paper also contains our recommendations on that.
723. **Ms McCorley:** In relation to Lord Morrow’s Bill, do you think that the element of paying for sexual services would enhance the Bill, or do you think that it would complicate it and therefore should not be included?
724. **Ms K McLaughlin:** That issue goes beyond the scope of the directive, and we have already heard from Christian Action Research and Education (CARE) on that. Article 18 of the directive mentions other measures, such as education and training. The training of front line law enforcement officials is absolutely crucial to the identification of victims. That will also have to be worked on at a policy level. In the EU strategy, the Commission will produce guidance on indicators for the identification of victims. We see that specific issue in terms of the human rights approach. Those are the things that we think need to be addressed.
725. **The Chairperson:** Should you criminalise paying for sex?
726. **Ms K McLaughlin:** I do not think that that is necessarily a question that is related to human trafficking directly and to how we should approach that. There was reference to the issue of demand, but we are talking about complying with the EU directive, the Council of Europe convention and the UN protocol. Those are international instruments and every one of them contains the same provisions in relation to the definition of exploitation and what constitutes trafficking. So, there is no international consensus on that issue. As we heard,

- there are models, but they have to be tried and tested and their pros and cons have to be debated. However, it is not within the confines of a human rights approach as stated. As we mentioned, it is a three-pronged approach: prosecution, prevention and protection. The most important thing is that we encompass those three elements in any efforts to address human trafficking.
727. **The Chairperson:** OK.
728. **Mr McCartney:** You say that the definition of exploitation in the Bill is not tight enough.
729. **Ms K McLaughlin:** There is no full definition in the Bill. It is referred to in clause 6. It is not referred to in clause 5, but, as I said, that is probably due to the fact that clause 5 is an amendment to the Sexual Offences Act, so, obviously, it would not then be pertinent to go into the other forms of exploitation within that. However, we feel that that highlights the dangers of a piecemeal approach.
730. **Mr McCartney:** Does the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 define exploitation?
731. **Ms K McLaughlin:** It does not have the full, encompassing definition because the sexual offences part and sexual exploitation would then be dealt with by the Sexual Offences Act. My recollection is that begging is also not included.
732. **Mr McCartney:** Are you saying in your briefing paper that articles 2 and 3 of the directive should be included in the Bill specifically in relation to trafficking?
733. **Ms K McLaughlin:** Yes, we recommend that the Bill spells out exactly the definition of exploitation and the act of trafficking. As I said in the presentation, the act of facilitating and arranging relates to transport only. However, there are also issues such as recruitment, harbouring or reception of persons. There is also the element of transfer of control. It is quite a comprehensive definition, and I can read it out if you wish. As it stands, however, “facilitate or arrange” does not really fulfil the objectives of the directive, the Council of Europe convention or the UN Palermo protocols. *[Interruption.]*
734. **The Chairperson:** It is all right. It is only a spilt jug of water; it is just like outside. *[Laughter.]*
735. **Mr Elliott:** We may as well have a flood inside as outside.
736. **The Chairperson:** Or as my father would have said to me, “Sure, throw it all around you now.” *[Laughter.]*
737. **Mr A Maginness:** You are throwing it all around me. *[Laughter.]*
738. **The Chairperson:** If you would like to pick up again where we left off.
739. **Mr McCartney:** In brief, Karen, are you making the argument in your briefing document that the paragraph that gives the definition should be in the Bill?
740. **Ms K McLaughlin:** Yes, that is what we recommend. Otherwise, you would be relying on exploitation being defined in the courtroom and certain aspects of the internationally agreed definition would be left out.
741. **Mr McCartney:** OK.
742. **The Chairperson:** Thank you very much. That was very helpful.



# 18 October 2012

## Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr William Humphrey  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

## Witnesses:

Chief Superintendent                      *Police Service of*  
 Ivan Farr                                      *Northern Ireland*  
 Assistant Chief Constable  
 George Hamilton  
 Chief Superintendent  
 Mark Hamilton

743. **The Chairperson:** I welcome Assistant Chief Constable George Hamilton, Chief Superintendent Mark Hamilton and Ivan Farr, Chief Superintendent head of scientific support. The session will be recorded by Hansard, and the transcript published in due course on the Committee's website. At this stage, I will hand over to ACC Hamilton.

744. **Assistant Chief Constable George Hamilton (Police Service of Northern Ireland):** Good afternoon, Chair and members; thank you for inviting us to this session. You will be aware that the Criminal Justice Bill deals with matters of sex offenders, human trafficking and the retention of DNA and fingerprints. Those are important matters for the Police Service, and we have engaged fully with the Department as the legislation has been developed.

745. The Criminal Justice Bill's provisions on sex offenders address four distinct areas. If it is helpful, I will briefly outline them and our position on them. First, the review of indefinite offender notification requirements came about

as a result of a court ruling in what is known as the F and Thompson case, which raised human rights issues surrounding the indefinite notification requirement. As a result, any sex offender who is required to notify indefinitely — those who are sentenced to 30 months' imprisonment or more — will now have the right to ask for that notification requirement to be removed. As with other UK jurisdictions, this will be 15 years after the individual has been required to notify after leaving prison, or eight years for a person who was under 18 when convicted. The Police Service has been liaising with the Department on the appropriate mechanism for such a request and the subsequent appeals mechanism. It is envisaged that the current assessed risk will be used primarily in any decisions regarding notification.

746. Secondly, there is the ending of notification requirements for acts that are no longer an offence, which would make us consistent with UK legislation and would reflect changes in legislation, for example a lowering of the age of consent. The Police Service supports those changes as it does not wish to criminalise individuals for acts between consenting adults of an appropriate age according to the legislation.

747. The third area is offences committed in a European Economic Area state other than the UK. That came about by the Police Service requesting such legislation from the Department following research carried out by the Police Service of Northern Ireland and an Garda Síochána as part of their intergovernmental working group on public protection around the harmonisation of legislation. Currently, if the Police Service of Northern Ireland becomes aware of a qualifying sex offender — that is someone convicted of a like offence outside the United Kingdom — taking up residence in

- Northern Ireland, we must first apply to the court to require them to notify a register in the United Kingdom. In the Republic of Ireland, any such offender must register with an Garda Síochána within seven days; failing to do so means that they would commit an offence.
748. Finally, there are proposed changes to the sexual offence prevention order (SOPO). Again, that has been requested by the Police Service as it will assist in the risk management of sex offenders. Currently, SOPOs can only contain prohibitions. The PSNI wishes to place a positive obligation on some sex offenders by making it contain positive orders as well.
749. I turn now to human trafficking. It is, by its nature, a hidden crime and has quite rightly been referred to as modern-day slavery. Trafficking for sexual exploitation remains the most significant detected form of trafficking, although concerns regarding forced labour are increasing. Sexual exploitation largely involves foreign national females in off-street prostitution. The victims will generally be recruited in their home countries, having either been tricked or deceived into travelling to Northern Ireland, where they will be forced into prostitution, or women who work in the sex industry who travel willingly but who are exploited when they arrive. Over the past three years, there has been an increase in the number of victims identified year on year, and although that cannot be attributed to an increase in trafficking, it may be an indication of increased awareness and detection.
750. The PSNI works closely with an Garda Síochána and a number of non-governmental organisations to increase awareness of trafficking. The PSNI and an Garda Síochána undertake joint training for investigators. The Police Service of Northern Ireland has introduced an online training package for front-line officers to assist in the recognition of signs of trafficking. More than 2,800 officers have completed that training, which is the highest percentage of officers in any police service in these islands. The organised crime branch has introduced additional training for some district officers to enhance investigative skills.
751. Our primary aim is to rescue men, women and children who are victims of this modern-day slavery. A major aspect of that is the provision of appropriate support upon recovery. The Department of Justice funds a support network that is contracted to Migrant Help and Women's Aid. Those two support organisations provide support, accommodation and welfare to victims of trafficking identified in Northern Ireland. Victims are normally cared for locally. However, repatriation and accommodation outside this jurisdiction is available if required.
752. The Police Service acknowledges the need to legislate to give effect to the Council of Europe Convention on Action against Trafficking in Human Beings. The Bill creates an offence of trafficking a UK resident within the UK who was not previously trafficked into the UK and an offence of trafficking outside the UK. The Police Service supports those measures as an additional means of tackling certain aspects of human trafficking.
753. DNA collection, management and retention is an important issue for the Police Service. Indeed, we have liaised with the Department since March 2009 regarding the development of legislation in the area. There is an urgent and pressing need for legislation due to the 2008 European Court of Human Rights ruling in the judgement of the case of S. and Marper, particularly as the current lack of legislative provision places police in a vulnerable legal position. Of late, that position has become even more precarious with the introduction of the Protection of Freedoms Act in England and Wales, as Northern Ireland is now the only part of the United Kingdom that is unable to comply with the S. and Marper ruling.
754. The PSNI recognises, however, that DNA collection and retention is an extremely complex area, and we appreciate the vital role of the Committee in ensuring

- that the legislation achieves the right balance between human rights, security and public protection. Indeed, I accept that getting the balance right is a political deliberation rather than one for the Police Service.
755. In light of that, I do not intend to make representations on what should or should not be amended in the Bill. However, from a police perspective, the Bill is a series of balances or trade-offs, and I ask the Committee to consider that every decision to destroy a profile potentially reduces the ability of the police to make a match and to detect a crime, thereby reducing the effectiveness of the DNA database as a tool in keeping citizens safe
756. Whatever legislation is agreed, I ask the Committee to take into account its practical application, how its costs and bureaucracy will be managed, and the risk associated with input and deletion. Whatever the Committee agrees, I ask you to consider how easy it would be for the provisions to be operationalised. I also ask you to consider the impact of any decision on our ability to share and to use information obtained from databases in other jurisdictions.
757. I expect that one of the significant challenges facing the Committee is the retention of the DNA of persons who have been charged or arrested but who have not been convicted. In light of that, I thought that the Committee might find it useful if I were to present some information on the DNA database, its use and its management.
758. The database is a tool that provides investigative leads by matching the derived DNA profiles with those that are collected at crime scenes. It is managed by Forensic Science Northern Ireland on behalf of the Police Service, and any searches of the database requested by the police are requested and carried out under strict guidelines, which are regularly audited. Moreover, the DNA profile is held on the database as a numeric code: the database does not hold a person's offending history, intelligence on the person or any other personal data.
759. I am trying not to bombard the Committee with statistics, but I would like to relate to you an individual account of the success of the database, and it would be useful on this occasion to provide you with some statistics relating to the performance of the national DNA database. Between May 2001 and December 2005, approximately 8,500 profiles from more than 6,000 individuals were linked to about 14,000 offences. Those offences included 114 murders, 55 attempted murders, 116 rapes, 68 sexual offences, 119 aggravated burglaries and 127 drugs supply offences.
760. To highlight the importance of the database, I thought that it would be useful to provide the Committee with an overview of one of the cases in which information provided as a result of the database was a key factor. You may recall the brutal murder of Sally Bowman near her London home in September 2005. At the time, the police investigation included the intelligence-led voluntary provision of DNA from 1,700 men. Despite that, the investigation drew a blank. However, almost a year later, Mark Dixie, a chef working in a pub, was arrested following a fight. Although he was not prosecuted for the fight, his DNA was taken, and when it was entered into the database, it produced a DNA match to Sally's murderer. That led the police investigating the murder to connect Mark Dixie with it, which led to his arrest and successful conviction for the murder of Sally Bowman.
761. Until the DNA lead, Mark Dixie had not been considered in the case, and, given that the investigation had been running for a year, it is unlikely that the murder would have been solved without the information provided from the DNA database.
762. We have similar cases in Northern Ireland, one of which is going through the courts. It is an historical murder dating back to the late 1990s, for which

- we have been able to identify, arrest and charge a suspect as a result of DNA that was taken for another offence. The result of that case is pending, so I cannot talk about the detail, but there are other examples. In both these cases, however, it is important to stress that the database does not convict people; there is always a presumption of innocence. The database simply provides the police with an investigative lead that they will explore as part of their investigation. The database is not a punishment, nor is it a measure of guilt; it is a tool for keeping people safe. DNA is simply part of the case; it is never the complete case.
763. Another issue that, I suspect, will pose significant challenges for the Committee is the management of DNA relating to young people, particularly given that a young person's offending history is recorded from the age of 10 and that, coupled with the provision in schedule 3 to the Bill that a caution be treated as a conviction, does, I imagine, pose a significant challenge for the Committee. In this area, achieving the right balance is of particular importance and, ultimately of course, a matter for the Committee. However, I hope to provide you with information regarding youth cautions that may be useful in your deliberations.
764. As you will be aware, the Bill proposes that if a juvenile commits a qualifying offence or commits other offences, the DNA recorded from that individual will be retained. As the Bill proposes, there is a potential that the two offences may be cautions. In relation to youth cautions, I thought that it would be useful if I provided the Committee with a sample month of cautions from September 2011. During that month, the criminal record indicated that approximately 130 juvenile cautions were recorded, including assault, occasioning actual bodily harm, aggravated assault, receiving stolen goods, theft, criminal damage and possession of an offensive weapon to name but a few.
765. The points that I have made about the need for balance between the person's right to privacy — there are article-8 rights — and the protection of the wider community need to be properly considered here. In doing that, I ask the Committee to consider the fact that we have few juvenile offenders in Northern Ireland and fewer who will be retained on the database. There are no persons under the age of 10 on the database, just over 5,000 in the 10 to 15 years age bracket, and 6,354 in the 16 to 18 years age bracket.
766. The disposal for the police should be that which is appropriate for the victim, the offender and the wider public interest. Therefore, I encourage the Committee to consider the nature of the offences rather than the method of disposal. For example, cautions or penalty notices for disorder could be used appropriately and proportionately for offences such as theft, criminal damage and indecent behaviour if that is appropriate to the circumstances.
767. I have sought to outline the value of DNA and the consequences of swinging the pendulum too far in respect of limited retention. However, I fully respect the position of the Committee in coming to a difficult balanced judgement on those issues. The Police Service prides itself in having human rights at the core of its operational decision making and fully accepts and respects the rulings in *S. and Marper* regarding the need for a shift in the balance towards a more proportionate position in this jurisdiction on the issue of DNA and fingerprint retention. Thank you, Chairman. I am happy to take questions.
768. **The Chairperson:** You have covered three areas, so I will take each area in turn. If members have a question around sex offender notification, we will deal with that, and then we can come back to members if they have other issues. That is probably the best way rather than jumping between three areas.
769. I was going to start with the sex offender notification issue, Mr Easton.
770. **Mr Easton:** I have a question on human trafficking.



771. **Mr Lynch:** I have two quick questions. With regard to ending the notification for what were crimes but not deemed crimes any more, is it up to the individual or the Department to initiate that process? In other jurisdictions, I think that the Department just wipes it.
772. **Assistant Chief Constable G Hamilton:** We need to check that. I think that in cases where there has been a change in the legislation and it is no longer a question of criminalisation, it would automatically be removed. However, we will check and come back to you. That would be easier for us from an efficiency and a bureaucracy point of view. We will see how it is crafted.
773. **Mr Lynch:** I have another quick question, Chairman. How will the failure to notify the police after three days once an offender has stayed for a qualifying period be identified and enforced?
774. **Assistant Chief Constable G Hamilton:** How will it be enforced?
775. **Mr Lynch:** Yes; how will the qualifying period be identified?
776. **Assistant Chief Constable G Hamilton:** I am sorry. Could you repeat the question?
777. **Mr Lynch:** It is two or three days' notification now?
778. **Assistant Chief Constable G Hamilton:** It is 72 hours.
779. **Mr Lynch:** Seventy-two hours. What is it being changed to?
780. **Assistant Chief Constable G Hamilton:** I am not sure what amendment is being made to the notification period.
781. **Chief Superintendent Mark Hamilton (Police Service of Northern Ireland):** I am not sure what the question is. Sorry.
782. **Mr Lynch:** It is being changed. It is three days; it is being changed to two days. Am I right?
783. **Chief Superintendent M Hamilton:** Sorry. I am not aware of that amendment. There is notification where people register having been convicted of offences outside this jurisdiction. It is seven days in the Republic of Ireland. Are you asking how we would know that, regardless of the timescale?
784. **The Chairperson:** It is a relevant issue. The duty will be on the individual to notify the police; if he or she has not done so within three days, how will you identify them and deal with that?
785. **Assistant Chief Constable G Hamilton:** Neighbouring or other jurisdictions know that a registered offender is coming towards this jurisdiction. That information is shared with us so that we can manage the risk. At present, we do not have the notification requirements to manage the risk effectively. That is the gap that we hoped the legislation would fill.
786. **The Chairperson:** How will you enforce it? When you have identified that someone is in breach, how do you deal with it?
787. **Assistant Chief Constable G Hamilton:** We would apply the same tactics that we do currently when someone fails to notify. It is a case of communicating that to our people and working with other agencies. They might be registering with housing agencies, ports, or whatever. We will try to use old-fashioned police methods to find out where a person outstanding is. It is pretty much a tactical and operational police issue to track down a missing person.
788. **Chief Superintendent M Hamilton:** We will then arrest that person.
789. **Assistant Chief Constable G Hamilton:** Yes. When that person is found, we will arrest and detain him or her.
790. **The Chairperson:** In England and Wales and Scotland, the police can extend the eight-year period to a maximum of 15 years with regard to further reviews. We do not have similar provision. Are you content that you do not have the facility to extend the second review period beyond eight years — which, I think, is our proposal — as opposed to 15 years elsewhere?
791. **Assistant Chief Constable G Hamilton:** As I understand it, it will be 15 years in certain circumstances. Eight years

- is the piece for a person who is under 18 years of age upon conviction. That seems to be proportionate; we are not asking for any more than that.
792. **Mr Easton:** Thank you for your presentation. Would the inclusion of a minimal custodial sentence for human-trafficking offences in legislation, rather than leaving it to sentencing guidelines, act as an effective deterrent?
793. **Assistant Chief Constable G Hamilton:** It may do. However, from our point of view, the making of laws and penalties and the subsequent application of them and sentencing are, in the first instance, for you, and, secondly, for the judiciary. We will collect the evidence and work within it. What we are keen to do is minimise harm and manage risk. Minimal sentencing on both those fronts has a limited contribution to make in minimising harm and reducing risk because, generally speaking, in a liberal democracy, the key is not thrown away for ever. That is something for you to consider politically. It is for the judiciary to consider the application of it. We will gather evidence in the reactive phase and, post-conviction, we will do what we can to manage risk and reduce harm.
794. **Ms McCorley:** Go raibh maith agat, a Chathaoirligh. Go raibh maith agat for the presentation. What is the PSNI's view of the provision that there be non-prosecution of victims who have been coerced into crime? Furthermore, do you feel that there should be more protection for victims in the pre-trial period, and should that be legislated for?
795. **Chief Superintendent M Hamilton:** Our view on victims is that anyone who has been trafficked into this country for the purposes of becoming a victim of sexual assault or for any other crime should not be prosecuted for that. That is very clear. We know of cases where people have no idea of where they are ending up, and they are a victim. The criminal justice system should not seek to criminalise victims; we are very positive about that approach. Can you repeat the second part of your question?
796. **Ms McCorley:** Do you think that there should be more protection for victims in the pre-trial period and during the court proceedings, and do you think that that should be in legislation?
797. **Chief Superintendent M Hamilton:** The issue of special measures for victims is one that the Police Service strongly supports on all grounds for vulnerable victims. If it needs additional legislation, we will support that. There are measures in place for vulnerable victims at present, and, we are aware of the debate on introducing special measures for victims in this case. On the principle that the criminal justice system should be victim-led, we are supportive of any measures. Whether those need to be put in statute or legislation is slightly different, but, at the very least, we are very willing to see a co-operative relationship with the rest of the criminal justice system to allow it to happen. If that could not be achieved, we would have no objections to special measures for victims.
798. **The Chairperson:** On DNA retention, Mr Wells.
799. **Mr Wells:** In a nutshell, Chief Constable, sorry, Assistant Chief Constable — *[Laughter.]*
800. **The Chairperson:** That is a Freudian slip.
801. **Mr McCartney:** What have you heard? Matt Baggott resigns?
802. **Mr A Maginness:** Instant promotion.
803. **Mr Wells:** You said that the change in the law on the retention of DNA will hamper the PSNI in its investigation of serious crimes.
804. **Assistant Chief Constable G Hamilton:** We need to go where the research and evidence take us. If the DNA profile is not on the database, we cannot use it. However, the timescales in the legislation are supported by research that shows that the retention of DNA profiles on the database is likely to be of most use for a period of between three and five years. However, if the profiles are not retained, we cannot

- make use of them because we do not have them.
805. Our view is based on working pragmatically within the jurisprudence that has come out of Europe and on proportionality principles. We respect that, and we do not see the need to resist it. In the S. and Marper case, for example, the European Court of Human Rights quoted the practice in Scotland as being compliant with what the court saw as being proportionate. The performance on keeping people safe and locking up bad people is no worse in Scotland than it is in other parts of the United Kingdom, for example, so I am not too pessimistic about the limitations that this will place on us. It is accurate to say that if a profile is not retained, it cannot be used. That is a statement of fact.
806. **Mr Wells:** Without wanting to stigmatise any group of individuals, is it true that criminals have to start somewhere and that they often start young? If they start young with antisocial behaviour and only receive a caution, many of them could go on to perform more serious crimes. Therefore, if the database is there, the chances of catching the person are much higher.
807. **Assistant Chief Constable G Hamilton:** The wider the scope of the database and the more material on it, the greater the chances of catching people. That is just probability. I would be careful on the issue of escalation of offending by young people involved in antisocial behaviour through to more serious offences. Some young people in their teens will do foolish things that we now label as antisocial behaviour, but they will not go on to engage in a life of crime or, even worse, in more serious offending.
808. **Mr Wells:** I agree. However, a serious hardened criminal is unlikely to have been an angel between the ages of 10 and 15.
809. **Assistant Chief Constable Hamilton:** I accept that.
810. **Mr Wells:** It is unlikely that he was a Sunday school choir member between the ages of 10 and 15 and, suddenly, in his later teens, he went down the route of crime. The chances are that they were already involved in antisocial behaviour at a young age and then moved up to higher things.
811. **Assistant Chief Constable G Hamilton:** It is fair to say that. I am not an expert in criminology, but, through our experience, we have seen an escalation from minor offending to more serious offending. That is our experience as police officers.
812. **Mr Wells:** Therefore if a caution is given and DNA is retained, there is a very good chance that if that person goes on to commit more serious crimes, he or she can be caught.
813. **Assistant Chief Constable G Hamilton:** That is right. It is why I made the point in my opening statement that the proposition that we put to the Committee to consider is not the method of disposal but the nature of the offending. We want to increase the use of non-court disposals. They are more proportionate for offenders, and, more important, they bring greater victim satisfaction because they get speedy justice; it feels as if something the system is doing something for them. Our concern is that if a differentiation were to be made on retention simply because of the method of disposal, helpful material would not be retained.
814. **Mr Wells:** Would that not make the Police Service move towards a more rigorous form of disposal rather than a caution?
815. **Assistant Chief Constable G Hamilton:** I said in my concluding comments that we pride ourselves in having human rights at the core of our decision making; therefore it would be rather perverse to change the method of disposal just to get a DNA sample. We would not do that, but I understand the meaning behind your question.
816. **Mr Wells:** Frankly, this is an absolutely daft proposal. I just cannot understand the logic of it, apart from the fact that we are apparently being forced into

doing this. Is there an argument that the Police Service of Northern Ireland is so well supervised, controlled and invigilated by so many bodies — there are so many protections for human rights in Northern Ireland; way above any other police force in western Europe — that any concerns that people may have about the retention of DNA in Northern Ireland have long since passed because there are so many other mechanisms to protect human rights?

817. **Assistant Chief Constable G Hamilton:**

The level of scrutiny, accountability and answerability that we experience here is greater than in other places, but that does not allow us to duck the jurisprudence and the need for proportionality and necessity to be applied to our decision making. We are already, in practice, exercising significant discretion on who we take DNA from. DNA is taken only from people who have been arrested. There are provisions for post-conviction if they have not been arrested and so on, but, generally speaking, we take DNA from people who have been arrested. The principles of necessity and proportionality are already considered by a police officer when they make the arrest, and they are quality assured, generally within minutes or a very short space of time, by the custody sergeant, who applies the same principles of proportionality and necessity before authorising detention. We have confidence in our current practice that we are applying the principles of necessity and proportionality anyway. Most cases that go through the criminal justice system do not start their life in the system by way of an arrest; just over 30% of cases that end up in courts start off as an arrest. The others can be reported without arrest and through other mechanisms. We need to be careful not to give the impression that there is mass taking and retention of DNA in a way that does not have any proportionality at the moment. I am satisfied that our current practice has those tenets of necessity and proportionality attached to it. We

are happy to work with you on the requirements of the Bill.

818. **Mr Wells:** The Children's Commissioner was in with us last week. She said that a young person who had been cautioned and had their DNA taken and retained would be stigmatised, and even traumatised, for the rest of their life by having the burden of their DNA being retained. Do you have evidence of many traumatised young people going around the streets of Belfast and Northern Ireland with that awful burden on their shoulders?

819. **Assistant Chief Constable G Hamilton:** No.

820. **Mr Wells:** My DNA was taken after a minor car accident 11 years ago, and I certainly do not feel burdened, traumatised or stigmatised by it. *[Laughter.]*

821. **Mr A Maginness:** Your behaviour discloses the fact.

822. **The Chairperson:** I wanted to ask about one point. There is a different approach to juveniles here compared with Scotland, which has an indefinite retention period for fingerprints and profiles. We are proposing to have what exists in England and Wales, which is an exception for juveniles if they are convicted of an excluded offence. In such cases, they will have a retention for five or 10 years, depending on the sentence. Are you comfortable with our having that exception for juveniles when Scotland does not?

823. **Chief Superintendent M Hamilton:** I think that we are broadly comfortable. We are looking for balance. We were not necessarily looking to replicate everything in every other jurisdiction, but, obviously, the Bill mirrors very closely the protection of freedom. We are happy that it is not indefinite retention for juveniles.

824. I take the point raised by Mr Wells. There is a balance between juveniles who stop offending and those who go on offending. There is no doubt that many adult offenders will have had some sort of offending behaviour when they were

- juveniles; however, many juveniles stop offending when they are juveniles. We are comfortable with having a balanced approach, which identifies differences in offences and retention periods.
825. If there are two cautions, and the second one is not for a recordable offence, the proposal is that it will be indefinite. Therefore the first one is for five years, and the second one is indefinite. We are comfortable with that.
826. **Mr McCartney:** I made this point to the officials when they were in. One of the consultation documents that guided this was 'Keeping the Right People on the DNA Database'. It gives a sense that there is a right type of person to be on the database. I think that that is where some of the issues around this develop. In your presentation, you said that 123,000 people here are on it. That is a high proportion, compared with anywhere else in Europe. Do you agree?
827. **Assistant Chief Constable G Hamilton:** I have not done a comparative analysis.
828. **Mr McCartney:** There are 123,000 people on it, and no one under the age of 10. I assume that there are not too many 10 to 15-year-olds on it. It is a high proportion.
829. **Chief Superintendent Ivan Farr (Police Service of Northern Ireland):** There are six million on the national database, and the list is growing every day. They keep adding to it for benchmarking purposes, but I am not aware of actual research into the figures.
830. **Mr McCartney:** That brings me to the next point. There is a current case and judicial review over retention. There is always the fear that you get a European Court ruling, we go back to it, we get the minimal requirements, and, then, in two or three years' time, there will be another challenge, and we will be back at this.
831. I move now to cautions. Have you any view on the fact that people, particularly those who are practitioners working with children, think that the two-caution rule is excessive? Do you have any view on that?
832. **Assistant Chief Constable G Hamilton:** I go back to the comments made earlier. We do not want the taking or not taking of DNA to be a factor in how we dispose of cases. From our perspective, the method of disposal is of secondary importance. The right threshold to achieve is the point at which the nature and seriousness of the offence is considered appropriate to take DNA. That is balanced judgement for you as the lawmakers rather than us to make. It is safer not to get hung up on the method of disposal, because a caution or fixed penalty notice for a disorder, or something that is less than the full criminal record, feels to me like a proportionate way forward. It is in the interests of the offender, and, as I said earlier, the victim is very often happier, because they are getting speedier justice. We should not allow that to cloud the issue of whether DNA is taken.
833. **Mr McCartney:** The week before last, the Human Rights Commission was here. In a response to another member's question, it likened DNA to private property and used the analogy of a person's home. In limited circumstances, people do not resent the fact that their house has to be searched or that the police have to enter it. However, it is not an open front door, and none of us would desire that to be the case. It made that observation in relation to retaining DNA.
834. Some weeks ago, I asked a question about the Sally Bowman case. I take it that the DNA of the person convicted of her murder was not already on the database.
835. **Assistant Chief Constable G Hamilton:** No; his DNA was put on the database after he was arrested for an offence for which he was not convicted.
836. **Mr McCartney:** Therefore the retention of six million samples did not assist with that case. It would be interesting to find out the statistics for how many cases have been cleared up solely because the

- police were able to match a DNA sample at the scene with one they already had for the person arrested. Whatever the arguments, if there was a staggering figure for that, you would be in a better position to assess the issue. There is an opinion that samples should be collected.
837. Perhaps I should not admit to this, but I watched 'The Nolan Show' last night. The person wrongly arrested for the murder of Joanna Yeates was on the show, and someone sent in a text saying, "How does he feel about the fact that his DNA and fingerprints have been retained?" I assume that they have been retained. Therefore someone who was the victim of a witch-hunt but who was then vindicated still has his DNA and fingerprints retained because he was questioned about a serious offence.
838. **Assistant Chief Constable G Hamilton:** I suppose that there are two ways. There is the backward-looking and the forward-looking DNA database work. Take the Bowman case, for example. A crime was committed for which someone was arrested; their DNA was taken and sampled at the time, and that helped the police to deal with a past case.
839. There is also the preventative element in dealing with crime. Clearly, part of the role of the DNA database is to allow us to have DNA ready so that when a crime occurs, we can look at the database. We look for DNA recovery very early, particularly for sexual offences and so forth. If we can scan the database and pull someone's DNA off it early enough, we can stop them reoffending. The database works in both directions, and we need it to do so.
840. You mentioned the Jo Yeates case. Under the Protection of Freedoms Act 2012, which is being applied to the schedule, I presume that because the person has not been convicted, their DNA will be maintained for only three years maximum, plus two.
841. As recently as this morning, we discussed our view of the legislation, which is that it is permissive in the sense that it allows us to have discretion. We believe that we should be actively weeding out DNA in such cases where there has been a miscarriage of justice or where there is clearly no need to keep the DNA, because the circumstances under which it was gathered in the first place were possibly incorrect. However, we do not want to — to use the expression — fetter our discretion on that either.
842. What I will say is that this will require the Police Service to be extremely diligent in weeding out such DNA. We have a great deal on the database, and we will have to weed through it now to make sure that we apply whatever criteria are decided in the Bill in order to deal with all the historical stuff and to make sure that whatever is left is compliant with whatever legislation is finally passed. We will then have an ongoing active process of case management to make sure that all the criteria for post-conviction, non-conviction or non-charge are met and that we actively manage that. Within all that, we also have a latitude of discretion for some cases.
843. The difference between the way in which the old database was run and the new one will be run is two-fold. First, we had everything on the old database; it was unfettered. However, the court has decided that that is not allowed anymore. Secondly, when we were allowed to do that, there was very little active intrusion about what was and was not necessary. The new court judgment means that the Police Service will have a far more diligent management plan, which we will work on over the next 12 months to get it in place. There will be protections for people in that as well, and those are almost a byproduct of the legislation.
844. **Mr McCartney:** I have two final points. I would like you to comment again on the idea that the Human Rights Commission raised about no difference being made between a person who ends up in prison as a result of not paying their TV licence and someone who commits a serious crime. Can you say, as investigators,

- whether the more samples of DNA there are, the greater the clear-up rate will be?
845. **Assistant Chief Constable G Hamilton:** I do not have figures to give you today on the last point, but the more DNA profiles that are available on the database increases the probability of future detections.
846. **Mr McCartney:** The Committee got statistics before showing that France is one of the lowest places as regards retention of DNA and fingerprints. I do not want to be blinded by science, but an argument would be if you were saying that your detection rate here is far higher than it is in France, but the evidence that the Committee got does not suggest that that is the case. There is no correlation between having more DNA and more crime being detected.
847. **Assistant Chief Constable G Hamilton:** France and this jurisdiction have two entirely different criminal justice systems. Even within these islands, different jurisdictions impact on detection rates, but I do not think that that undermines the utility of DNA evidence. I think that it is still a sensible thing to do within the right proportionality framework.
848. To deal with your point about the TV licence offender, I will go back to what I said earlier, and Mark has just reinforced it regarding discretion. First, DNA is taken only routinely for recordable offences; those offences that are listed and where the person has been arrested. Even then, the current legislation, and as it is drafted in the Bill, is permissive, not prescriptive, so we do not have to take DNA. For example, the person who defaults on their TV licence would not be an arrested person under the Police and Criminal Evidence Order; they would go straight to prison under some criminal justice order somewhere. Therefore, there would be no requirement to take that DNA routinely.
849. Secondly, the legislation does not currently, or in the future — unless you make some radical changes here — compel us to take DNA. We do not want that fettered. We want to make sensible, proportionate decisions to cater for the more extreme examples that you talk about where it clearly is not proportionate to be taking it.
850. **Mr McCartney:** Thank you.
851. **Mr A Maginness:** Your submission is very interesting. You are not being definitive when you come to this Committee. You are just advising us as to your thinking as police officers. You are not saying that thou shalt do such and such.
852. **Assistant Chief Constable G Hamilton:** We do not think it is our place to do that. We think that it is our place to identify to you very clearly the consequences of how far this pendulum swings. The S and Marper case gives you the jurisprudence that you are going to have to do something with. It is not proportionate to keep all DNA for ever without having some sort of review mechanism. We respect that, but we think that there are some factors that we have tried to outline in our opening statement and in this discussion that we ask you to take into account so that we can continue to do our jobs.
853. **Mr A Maginness:** That is very helpful, although it puts the onus on us to make the hard decisions in relation to defining the law a bit more clearly and getting the balance and proportionality right. I worry about the area of the cautions. When somebody is cautioned, do they admit their guilt in all circumstances?
854. **Assistant Chief Constable G Hamilton:** Yes. They cannot be given a caution without full acceptance of their responsibility.
855. **Mr A Maginness:** So, it is not a matter of a completely innocent person receiving a caution. Nonetheless, it seems to take away from the notion of a caution giving somebody another chance to behave properly. When you say that there should be retention of DNA arising out of a caution, it goes against the grain, does it not?

856. **Assistant Chief Constable G Hamilton:**  
If the caution and the restorative practice that often accompanies it these days has the desired effect, then the person will not reoffend. Therefore, after three years, their DNA — well, it will not be retained for ever.
857. There are safeguards in place. I come back to the point that DNA is not taken from every young person who is cautioned. There is a threshold or bar of necessity and proportionality around our making an arrest in the first place, and, under the current legislation and in the Bill, we only have the power to take DNA when an arrest has been made. We apply a safety net of proportionality and necessity when we make an arrest, and it will not be necessary to remove the liberty of many younger people or, in fact, many older people in that sense. We might require voluntary attendance at a police station or we might interview people in their homes in the presence of a solicitor or whatever. Only when it becomes necessary and proportionate to arrest someone would we say, if it is a recordable offence, that it is appropriate to take DNA.
858. **Mr A Maginness:** Do you have any idea of what percentage of those who come in contact with police for wrongdoing to witnesses, etc, have their DNA retained?
859. **Assistant Chief Constable Hamilton:** As I said earlier, about 30% of those who enter the criminal justice system do so by means of having been arrested, so just under a third. Not all of those will, necessarily, have DNA taken, although the majority will. I cannot give you an exact figure, but you are probably talking about a third or just under a third.
860. **Mr A Maginness:** Yes; that would be your understanding. OK. Thank you.
861. **The Chairperson:** There are no other questions. Thank you very much.



## 8 November 2012

### Members present for all or part of the proceedings:

Mr Raymond McCartney (Deputy Chairperson)  
 Mr Stewart Dickson  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone

### Witnesses:

Mr Gareth Johnston *Department of Justice*  
 Ms Amanda Patterson  
 Ms Debbie Pritchard  
 Mr Simon Rogers

862. **The Deputy Chairperson:** The departmental officials are in their place and at the ready. Gareth and Amanda, thank you very much for coming. You will be relieved to know that you do not have to make a presentation. If issues arise as we go through the clauses, we will ask you to comment. That was the procedure when we considered the previous Bill, and it worked well. We will use the clause-by-clause table, and I will highlight some issues raised by various contributors. Members may comment at that stage. If they do not wish to comment, we will move on.

863. The Policing Board suggested that the Bill be amended to include a statutory duty on public bodies to have regard to the likely effect of crime and antisocial behaviour when exercising their functions and to do all that they reasonably can to enhance community safety. This is similar to the proposed clause 34 in the previous Justice Bill, which the Committee rejected at the time. In response, the Department states that the management of risk from sexual offending is already a multi-agency function under the Criminal Justice Order 2008. Have members any views or comments? When no member

indicates that they wish to comment, I will move on.

864. The Policing Board also questions why a provision for violent offender orders is not included in the Bill. The Department advises that draft legislation for violent offender orders will be introduced in the Faster, Fairer Justice Bill and will be presented for consideration by the Committee next month.

865. The Probation Board raises two issues in its submission, although these are not specifically related to clauses. The first relates to the requirement for an offender to notify the PSNI if they reside in a household in which a child is under the age of 18. The second issue is the requirement for an offender to notify their whereabouts to the PSNI weekly if they have no fixed abode. The Department has advised that both matters will be dealt with through the introduction of subordinate legislation, which the Committee will have the opportunity to scrutinise. Are we content with that approach?

866. **Ms McCorley:** Yes

867. **The Deputy Chairperson:** OK, we will move on to clause 1 and schedule 1. Disability Action raises a number of issues related to applications for the review of indefinite notification requirements. It particularly refers to the stipulation that such applications must be in writing and recommends that other forms of communication be accepted. It also highlights that the form of communication by statutory criminal justice organisations such as the PSNI is not prescribed in the Bill. The Department is of the view that an application in another form would prove difficult in practice and highlights that the application need not be made by the applicant. However, it envisages the involvement of a third party should disability prevent an applicant making a written application. The Department

- intends to cover that issue in guidance. Are members happy with that? I invite the officials to tell us how they will put that into the guidance.
868. **Ms Amanda Patterson (Department of Justice):** We have been consulting all the major stakeholders on what needs to be in the guidance. Under the proposed legislation, guidance is a statutory requirement. The issue of people who have difficulty, for whatever reason, making an application will be dealt with so that it is made quite clear that a third party can do that on their behalf.
869. **The Deputy Chairperson:** OK. Obviously, it will be assessed whether that guidance complies with disability legislation as well.
870. **Ms Patterson:** Yes.
871. **The Deputy Chairperson:** Thank you. Are we content with that approach?
872. Disability Action also raises an issue with the inclusion of the undefined term “disability” as grounds for the Chief Constable when considering an application. It requests that paragraph 3(2)(a)(iii) of proposed new schedule 3A to the Sexual Offences Act 2003 be removed. The Department’s explanation is that Disability Action has misunderstood the provision. It states that the Chief Constable must take account of the seriousness of the offence of which the person was convicted or, if not convicted, was found to be under a disability and “to have done the act charged” that led to notification. The Department said that the term “disability” is included as a notification attached by the Sexual Offences Act 2003, whether the person was convicted, found to be insane or found to be under a disability and to have done the act charged. May we have some more clarification of that?
873. **Ms Patterson:** An example might make it clearer. The case that everyone probably knows about is that of the brothers in Donagh who were found to have done the act charged but to be under a disability. However, the notification requirements of the Sexual Offences Act applied in that case anyway, so it is to cover situations such as that.
874. **Mr Dickson:** May I ask a question about the process? It has nothing to do with this particular instance. Has the Department’s comment that Disability Action’s concerns were based on a misunderstanding been relayed to that organisation?
875. **Ms Patterson:** No, because this document is a response to the Committee, whereas the comments were responding to the consultation —
876. **Mr Dickson:** I do not mean to be rude, but how can we check the veracity of that? How can we know that Disability Action is or would be satisfied with the Department’s comments?
877. **The Deputy Chairperson:** That may be something that —
878. **Mr Dickson:** The Committee Clerk will explain.
879. **The Deputy Chairperson:** Of course she will.
880. **The Committee Clerk:** If the Committee wishes, we can send the Department’s response to Disability Action.
881. **Mr Dickson:** I am not picking on that in particular; it is just that I think that this is likely to arise on quite a number of occasions.
882. **The Committee Clerk:** We will reflect that in our report on the Bill. In the meantime, we can send on the Department’s comments.
883. **Mr Dickson:** Yes. If doing so clears that up and Disability Action says that it did misunderstand and now sees where the Department is coming from, that would be one less thing to worry about, would it not? Alternatively, Disability Action may continue to be of the view that we or the Department have misunderstood.
884. **The Committee Clerk:** Yes, we can do that.
885. **Mr Dickson:** Thank you.

886. **The Deputy Chairperson:** The National Society for the Prevention of Cruelty to Children (NSPCC) suggest the inclusion in the legislation or guidance of a number of further matters for the Chief Constable to consider when arriving at a determination to de-register an individual. The Department indicates that they will be provided for in guidance. Are members content with that approach?
887. The NSPCC's view is that the differences in the notification requirements for adults and children, and the possibility of varying a notification direction for young offenders under the Sexual Offences Act 2003, do not go far enough in recognising and attempting to meet the rights, needs and vulnerabilities that are specific to children. It also suggests a review of the effectiveness, proportionality and impact of the current and proposed notification requirements on young offenders.
888. The Department is of the view that this comment pertains to a more fundamental issue in relation to the operation of the legislation as a whole and cannot be addressed in the context of the changes proposed in the Bill.
889. Do you intend to undertake a separate review?
890. **Ms Patterson:** There are no plans to do so at present.
891. **The Deputy Chairperson:** Do members have any issues? Might we wish to return to that?
892. OK, let us move on. The Human Rights Commission seeks further information on how the periods that must elapse before a review is permitted have been determined and what evidential basis informed that decision. It also seeks information on what assistance will be available to an individual when preparing his or her application and what forms of evidence the Chief Constable or Crown Court would require.
893. The Department's response outlines its thinking behind the review periods. It also highlights that the preparation of an application is the responsibility of the offender and that the Bill states that offenders may give such information as they wish to be taken into account. Do we need any clarification or are members happy with that approach?
894. **Ms McCorley:** May we have a wee bit more clarification?
895. **The Deputy Chairperson:** From the officials?
896. **Ms Patterson:** The initial review period is similar to that in England, Wales and Scotland so that the period is the same throughout the United Kingdom. It was set on the basis that the highest fixed period for which an offender must notify is 10 years. Therefore, it has to be for a period over and above 10 years because someone who has a fixed period of 10 years obviously must remain subject to notification for those 10 years. On that basis, it seemed reasonable and appropriate that the next point on the scale, which links the seriousness of offence to the length of time for which a person should have to notify before review, would be 15 years. That is the period that all jurisdictions came up with.
897. **The Deputy Chairperson:** Thank you. Returning to the point that Stewart made, I assume that the Human Rights Commission and other bodies will read the Hansard report and may ask us to seek further clarification.
898. We will move on. The Policing Board raised an issue with the resource implications for the PSNI as a result of the review of indefinite notifications. The Department estimates that the PSNI would have to make determinations on an average of 20 applications a year. The PSNI did not raise that issue of resources in its written or oral evidence. Are there any issues with that?
899. **Mr Dickson:** Again, it is difficult to contextualise this. The Department estimates that the number of determinations will peak at an average of 20 a year. How many does the PSNI make currently? Where does the figure

- of 20 sit on the scale of things? Is it more or less?
900. **Ms Patterson:** The PSNI does not make any determinations at the moment.
901. **Mr Dickson:** It makes none and is being asked to make 20.
902. **Ms Patterson:** It would work out at roughly 20 a year. The police themselves, as the major player in making those decisions, are —
903. **Mr Dickson:** Is that the PSNI's estimate?
904. **Ms Patterson:** Yes, the figure came from the PSNI.
905. **The Deputy Chairperson:** I will just restate that we will return to this at Further Consideration Stage. Are there any views or comments on clause 1 or schedule 1?
906. Clause 2 deals with ending notification requirements for acts that are no longer offences. Only one issue was raised. In the PSNI's oral evidence, which members can read in the Hansard report, it said that, from an efficiency and bureaucracy point of view, it would be easier for the police automatically to remove notification requirements for acts that are no longer offences rather than the relevant offender having to apply. Do you have any comments?
907. **Mr Gareth Johnston (Department of Justice):** With the automatic approach, the issue might arise of circumstances in which someone honestly believed that a person was below the prescribed age when the notification requirement was cancelled. That needs an amount of discretion. The Department would perhaps need to look at the papers or transcripts from the trial and reach a judgement based on that. It cannot always be a tick-box exercise.
908. **Ms Patterson:** It is just a change to the existing application arrangements, because there already is an ability to apply for removal. It is just the offences that change as a result of this legislation.
909. **Mr Johnston:** We do not anticipate a very big number of cases.
910. **The Deputy Chairperson:** Are you guided by positions in other jurisdictions?
911. **Ms Patterson:** These are the same arrangements that apply throughout the UK.
912. **The Deputy Chairperson:** Are there any comments or views on clause 2? No. Again, we will return to this.
913. Clause 3 deals with offences committed in a European Economic Area (EEA) state other than the United Kingdom. I want to bring to members' attention the fact that the Executive did not support the provision in clause 3 that places a statutory notification requirement on offenders with convictions from another state who come to the North for a period of more than seven days. The limitation to EEA states was included in the provision on the advice of the Attorney General. His view was that the Bill would not be compliant with human rights obligations. The Department has looked at a number of options to deal with the concerns of the Executive and the Attorney General. I now invite the officials to say which options the Department is considering.
914. **Ms Patterson:** There were a number of options, but the Attorney General advised that, one way or another, they still had implications for rights under the European Convention. As suggested by the Executive, we had further discussions with the Attorney General, and we have come up with an approach that may solve this issue. It is a twin approach, and it will apply in the same way to offenders with a conviction for a sexual offence, which would be an offence if it occurred in Northern Ireland, who come to Northern Ireland from any other jurisdiction outside the UK. That would address the concerns that someone may be made amenable for a criminal offence on the basis of, for example, a conviction that is not sound in a state in which there are perhaps poor human rights standards.

915. After discussions with the Attorney General, we propose that it be a defence against any charge of a failure to comply with the notification requirements if someone is able to prove that the original conviction, which is the basis for the notification, has fallen so short of the convention standards that the court cannot be satisfied that the person committed the offence.
916. The other approach is to allow the person a right of application to the High Court for the removal of any notification — the removal of that requirement — if they can prove to the court that the original conviction fell short of convention standards. In effect, that means that someone can choose either way. Someone required to notify may say that they will not do so because their conviction was for a trumped-up offence. If there is sufficient proof that the person has the conviction, the police can press charges and the Public Prosecution Service (PPS) can prosecute. The person can then defend on the basis that the conviction was not sound, and it is for the court to decide on that basis. Alternatively, the person can, if told that they have to comply with notification, simply agree to it, give their details to the police and make an application to the High Court for the removal of that requirement to notify. So it is a twin approach, either of which could be followed. We think that that might solve the problem.
917. **The Deputy Chairperson:** Do you have any indication of when the wording of the proposed amendment will be ready for us to look at?
918. **Ms Patterson:** Not at the moment, but I can certainly keep you up to date.
919. **The Deputy Chairperson:** That is grand.
920. **Mr Lynch:** Is one of the options that you outlined similar to a retrial for the person concerned? If a person said that there had been a miscarriage of justice in another jurisdiction, are you talking about their having a retrial here?
921. **Ms Patterson:** No, the court would look at the circumstances, processes and procedures surrounding their conviction.
922. **The Deputy Chairperson:** Will the proposed amendment come before the Committee before we finish our deliberations, or will it just be tabled at Further Consideration Stage on the Floor?
923. **Ms Patterson:** Would the Committee like to see the wording?
924. **The Deputy Chairperson:** That might be better so that the Committee can take a view on it. Otherwise, it could be the subject of debate, and people may say that we did not get enough time to scrutinise it. Members, we will come back to this, so we will have an opportunity to consider whatever amendment is proposed.
925. I will highlight a number of relevant points. The Policing Board questions how a failure to notify the police within three days will be identified and enforced and how relevant persons from EEA countries will be made aware of their obligation to notify the police. The Department advises that other police services may share information with the PSNI if they know that an offender is travelling. However, there can be no guaranteed way of ensuring that the police will be alerted when a sex offender comes here.
926. The PSNI is working with the Garda Síochána to ensure that offenders from Ireland will be informed of their obligation in advance of coming North. If the police become aware of their presence, they can immediately be informed, and offenders will have to notify straightaway or risk arrest and prosecution. The PSNI did not raise that as a particular issue in its evidence. Do members have any questions?
927. The Public Prosecution Service highlighted a drafting error, which the Department advises has been rectified. I am actually now seeking agreement of members. We have gone through clause 3, but there is the wording of an amendment to come before us, so

I am going to park that until further consideration.

928. Clause 4 deals with sexual offences prevention orders (SOPOs). The Policing Board highlighted the fact that any positive obligation imposed on a person subject to a SOPO must be lawful, proportionate and necessary. That is something that the police must bear in mind if suggesting conditions on application to the court for a SOPO. The Department has highlighted in its response the fact that the court makes decisions on what is lawful, proportionate and necessary in accordance with existing legislation. Are there any views or comments on clause 4? Again, that is something that we will refer to. I advise members that the Department intends to include an additional sex offender notification provision in the Bill by way of an amendment at Consideration Stage. I refer members to annex B of the Department's briefing paper, paragraphs 6 to 23, which are relevant. I ask the officials to outline the proposed new provision.
929. **Ms Patterson:** It is an amendment that has its origins with the PSNI, which saw a gap in the current legislation concerning details and information provided to it by offenders who may travel within the UK. At the moment, there are quite strict arrangements for offenders who wish to travel outside the UK, in that they have to notify the police in advance of where they are going and how long for, where they intend to travel and date of return, etc. There is also a requirement for offenders to notify the police if they intend to stay at another address for longer than seven days in any 12-month period, so that the police have a list of their major address and any other addresses that they are inclined to stay at. However, they are not required to provide information to the police about plans to travel within the UK. For example, if they go travelling and use bed and breakfast establishments or whatever, and do not stay at any one of them for any longer than seven days, they can do that for basically as long as

they want and the police do not have any idea where they are.

930. That was brought to our attention by the police in relation to a particular case where somebody had a touring caravan and was out of this jurisdiction, but within the UK, for some time and they did not know where that person was. It did not lead to reoffending behaviour, but it could do that. They asked us to provide legislation to cover that option, so this is the outcome of that. The proposal is that anyone should have to notify the police if they intend to be away from their home address for longer than three days and that they should tell the police where they intend to be, what their method of travel is and where they are going to stay for the period of time. We also recognise that that might be over-burdensome and disproportionate on individuals who may have to travel a lot, perhaps in connection with family or work. We want to make sure that there is something in the proposals to allow for such individuals to make a multiple notification so that they do not have to do it every single time. The proposal will also cover travel within Ireland as well as in the UK, which will make no difference to the current arrangements, because travel to Ireland still has to be more than three days. This will cover the same ground.
931. **The Deputy Chairperson:** Thank you. Again, I will ask the broad question: will your amendment be ready for the Committee for the —
932. **Ms Patterson:** We will do the same.
933. **The Deputy Chairperson:** OK.
934. **Mr Dickson:** How will that be reciprocated, or are there any plans to invite reciprocation from the other United Kingdom jurisdictions with regard to that? It sounds as if we are going to be doing something more than they are.
935. **Ms Patterson:** We are doing something that is slightly more than is currently available in England, Wales and Scotland. I know that Scotland has shown some interest, but it has not been brought to the attention of the

- authorities in England and Wales by the police services there. An interest may be sparked when they see what is planned for Northern Ireland. However, at present, we are one step further.
936. **Mr Dickson:** If, for the sake of argument, the person goes to England for three days to visit a relative is there a requirement to notify the police there that they are present?
937. **Mr Johnston:** Not on the person —
938. **Mr Dickson:** Sorry, on the PSNI.
939. **Mr Johnston:** If the PSNI was concerned or had any doubts, you would expect that it would get in touch with the relevant police force.
940. **Mr Dickson:** So, it is a management issue for the PSNI, rather than a statutory obligation. That is fine; that explains it. Thank you.
941. **The Deputy Chairperson:** As no other members have any questions, I want to thank Gareth. I think that you practically had a non-speaking role today. That is unusual for you.
942. **Mr Johnston:** It had to happen once.
943. **The Deputy Chairperson:** Amanda, I think you are staying to discuss the human trafficking parts of the Bill. I invite Simon Rogers, the deputy director of the protection and organised crime division and Debbie Pritchard from that division to come forward. I know that Simon and Debbie were present earlier. We are just going to do this in the same format and invite you for comment when appropriate.
944. We will deal with clauses 5 and 6 of the Bill. Aspects of both clauses are closely linked, so we will maybe do this around headings rather than just line by line. The headings are in the appropriate appendix.
945. I will begin by making a number of general observations from the evidence. CARE said that the proposals in the Criminal Justice Bill seek to copy England and Wales in the substance of the changes to be introduced, but it achieves it through a different means, with the outcome that there will be more trafficking offences applicable here than in England and Wales, and is unclear about the rationale for this complexity.
946. The Department advised that the clauses, although drafted in a different style, cover the same range of criminal activities as in England and Wales and mirror the additional provisions in Scotland, which provide for extra-territorial jurisdiction over persons habitually resident here at the time of committing the offence outside the United Kingdom and companies incorporated under the law of a part of the UK.
947. Are members content with the response from the Department, or do they have any queries?
948. OK, I am going to move on.
949. CARE's view is that the proposals in the Bill reflect a very minimalist approach to implementing the European directive. That view was also expressed by a range of organisations and individuals in response to the Department's consultation on the human trafficking clauses.
950. The Department does not agree that the Executive are taking a minimalist approach or simply mirroring the changes in England and Wales. It has suggested that the mandatory changes will be implemented as they will be in England and Wales, but that the Criminal Justice Bill will also implement the discretionary changes in that the offence will extend to habitual residents and bodies incorporated under the law of a part of the United Kingdom.
951. The Department went on to outline the areas here where the Bill will be more stringent, such as the maximum term of imprisonment and the minimum recovery and reflection period.
952. The Committee wrote to the Minister of Justice on 5 July, and advised him that members wish to see the strongest possible legislation introduced in relation to human trafficking, and that

it would give further consideration to that when considering the Bill. The Committee will wish to bear that in mind when assessing the issues that have been raised in that part of the Bill.

953. I invite members to make comments at this stage.

954. The Human Rights Commission noted that the legislative framework that outlines offences concerning the trafficking of human beings is particularly complex here and already involves reference to provisions in a number of other pieces of legislation. It highlights that the provisions are set to be accompanied by the Criminal Justice Bill and a potential Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. The commission advises that consideration should be given to the introduction of a trafficking human beings legislative guide or a single comprehensive piece of legislation to increase the accessibility and awareness of crime.

955. NICEM also raised concerns about a piecemeal approach to legislative reform. The Department has consulted on the matter with the relevant law enforcement agencies, and none advised that the current framework is causing difficulties. The Department may, however, consider a consolidation exercise when other pressing areas of work have been completed. The Department has advised that the PPS policy on prosecuting cases of human trafficking, which is to be published in early 2013, contains a legislative guide. Are members content with the Department's response?

*Members indicated assent.*

956. **The Deputy Chairperson:** The Council for Ethnic Minorities (NICEM) highlights the need for a three-pronged approach to human trafficking: prosecution, protection and prevention. It believes that provisions to deal with protection and prevention are missing. The Department advises that robust measures to support victims and activity to prevent trafficking are in place,

and that consideration is being given to whether secondary legislation is required in relation to support.

957. Are there any considerations around support measures, which will be provided for in secondary legislation?

958. **Mr Simon Rogers (Department of Justice):** Yes. Support, obviously, is a cross-cutting issue. In other words, it does not affect just the Department of Justice; it will impact on Health, Education and others. The Minister is going to write to Executive colleagues to seek their agreement to legislate through the designation order route in secondary legislation providing for assistance and support. We need to go through the arrangements with ministerial colleagues first.

959. **Ms Debbie Pritchard (Department of Justice):** When we hear from ministerial colleagues, we will write to the Committee to seek its support. We hope, with the Committee's support, to bring subordinate legislation to coincide with the timing of the European directive in April 2013.

960. **The Deputy Chairperson:** Is there any particular reason why secondary legislation is more appropriate than primary legislation?

961. **Ms Pritchard:** Other than it is normally quicker, no.

962. **Mr Simon Rogers:** There is no grand reason other than that it is possible to do it through secondary legislation under the designation order.

963. **The Deputy Chairperson:** OK. Does anybody have any queries?

964. I am now going to deal with the European directive 2011/36/EU. The Human Rights Commission and CARE raised concerns about the extent of compliance with the EU directive. The Department has provided a table that sets out clearly that we will be compliant with the EU directive by April 2013. I invite you to run through the table to explain how it sets out how we are compliant.



965. **Mr Simon Rogers:** In effect, we have provided an article-by-article analysis of the directive. Some of the issues fall beyond the Department of Justice; we have set out how we think the Executive meet the requirements. Obviously, clauses 5 and 6 deal with the gap that was seen in this jurisdiction and others. We were not compliant in that respect. However, in other respects, as the table sets out, we are compliant. We have set out that we are doing further work in a few areas. One of those is the secondary legislation that we have just discussed on support for victims. Other areas are whether, responding to the Committee's concerns, trafficking offences should be indictable only, rather than triable either way. We are also looking at a number of administrative areas under the directive.
966. **The Deputy Chairperson:** Everybody has seen the table. People should satisfy themselves with the table and the range of issues that we are compliant with before I ask people to move on. We can return to this issue at a later stage. If people want a bit of time to examine that, we can return to it.
967. I will move on now to the scope of the Bill. CARE and the Children's Commissioner raised an issue about the scope of the Bill and suggested that further provision could be added. The Department has advised that it is considering secondary legislation to strengthen the support for victims. Can you outline the idea that you will use secondary legislation to strengthen support for victims?
968. **Mr Simon Rogers:** That is the issue that David Ford will be writing to Executive colleagues about under this designation order. It will be secondary legislation setting out that government Departments should provide assistance and support for victims of human trafficking.
969. **The Deputy Chairperson:** At this stage, the Minister is not considering any further clauses to the Bill? He is satisfied with the scope of the Bill?
970. **Mr Simon Rogers:** Some of these things overlap between this Bill, the directive and Lord Morrow's Bill, but the other area is whether the offence should be indictable only, rather than triable either way. We are consulting on that because we do not want to produce unintended consequences when making that change. On the one hand, the aim is to reflect the serious concern of the Committee when we were last before you about that issue, but on the other hand, when the legislation was first introduced, consideration was given to whether it should be triable either way. The Minister at Westminster said that one reason for possibly having it triable in the Magistrates' Court was in case of that exceptional case where someone was on the periphery of human trafficking and ended up in the Crown Court rather than Magistrates' Court. That is another area that we are looking at. There is also a need to legislate to put the new offences under clauses 5 and 6 into those provisions that may be referable by the Director of Public Prosecutions to the Court of Appeal if he thinks that they are unduly lenient. Again, that is a secondary legislation provision that we will come back to the Committee on in due course.
971. **Ms Pritchard:** In relation to the possible change of making the offences indictable only, when we have concluded the consultation that Simon referred to, if the Minister decides that he wants to make that amendment, it is likely that it will be tabled at Consideration Stage of the Criminal Justice Bill. I do not think that we will have that work completed in time for the Committee concluding its work on the Bill, but it will hopefully be taken forward in the Criminal Justice Bill if the Minister decides to do that.
972. **The Deputy Chairperson:** I will now move on to language and terminology. NICEM raised a concern about the use of the words "arranges or facilitates" in the new section 58A and suggests alternative wording. The Department advises that that is the terminology used in England, Scotland and Wales and that there have been no reported

- cases highlighting any problem with the interpretation of “arranges and facilitates” dealing with prosecutions under the relevant legislation. Are people happy with that approach?
973. NICEM also raises an issue about the extension of the offence of trafficking people for sexual exploitation to people who may incite, aid, abet or attempt to commit the offence. The Department advises that the law here is in a similar manner to equivalent legislation in England, Scotland and Wales and contains statutory provisions that apply to all criminal offences, and this covers aiding, abetting, etc.
974. NICEM raises another issue about sanctions for legal persons. That is, the Bill does not set out penalties for legal persons, just for persons. The Department advises that, under the Interpretation Act 1978, which extends to the North:
- “Person” includes a body of persons corporate or unincorporate.*
975. The Criminal Justice Bill is consequently compliant with the legal persons definition in clauses 5 and 6. Are members content with that approach?
976. The PSNI recommends that there is consistency in the Bill in referring to “human trafficking”, rather than, at times, “trafficking people”. The PSNI believes that this consistency would ensure that the Bill reflects accepted terminology in this area and avoid confusion with separate offences of people smuggling. The Department notes that human trafficking is now a well-understood terminology or description and believes that the proposed PSNI approach could result in something less succinct in draftsmanship and will not necessarily improve upon the existing use of the readily understandable generic description of human trafficking. Do the officials have any comment to make on that observation by the PSNI?
977. **Mr Simon Rogers:** This is dangerous territory for officials, because, obviously, we were guided by the draftsman on this. We would not want to suggest that his draftsmanship was in any way short of the mark. We do think that the term “human trafficking” is well recognised and is entirely appropriate.
978. **Mr Elliott:** I do not think that the PSNI is questioning the issue of clarity on human trafficking. It is asking about the inconsistent approach of the officials or draftsmen around the use of the words “trafficking people”. I do not think that that has been dealt with in the explanation. It would be useful if we could get a further explanation, whether that is from officials or the draftsmen. I see the point that it may provide some inconsistency. If there is an explanation, that is fine.
979. **The Deputy Chairperson:** How do we progress that? Is it through the Department?
980. **Ms Pritchard:** We will come back to the Committee Clerk.
981. **The Deputy Chairperson:** Next is the definition of “exploitation”. Disability Action and CARE both requested that the definition of exploitation be extended to include forced begging. The Department has advised that forced begging constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. NICEM recommends that “exploitation” should be defined in the Bill. The Department considers that there is a risk in being overly prescriptive as this can limit flexibility in dealing with individual cases, make it more difficult to respond quickly to changes in criminal behaviour and possibly provide criminals with a means to work around the legislation.
982. From a prosecutorial perspective, the PPS is not supportive of the inclusion of a definition as the offence may be limited, and it may not be able to prosecute the offence if there is no evidence of the means contained in the definition. NICEM also highlights the fact that a definition of “habitual residence” is not included. The Department advises

- that the term “habitual residence” occurs in a number of conventions and directives and is not defined in them. It is the Department’s view that case law is clear and that it should be given its ordinary and natural meaning having regard to the facts of each case. Are we happy enough, or do people think this is something that we wish to return to? Again, I restate that people can come to this.
983. I move on to extension of jurisdiction. The Policing Board questions whether it is within the Assembly’s legislative remit to create an offence in respect of all British citizens, subjects and overseas territories citizens, particularly where they have no connection with the North and no element of the unlawful act takes place in the North. The Department advises that the new offence involves trafficking outside the United Kingdom committed in whole or in part in the North. Any issues?
984. The Policing Board details a scenario and raises an issue around the likelihood of a trafficker being prosecuted twice in the UK in different legal jurisdictions for the same unlawful act. The board also questions whether the new offences should be limited to applying to all persons who, at the time of the offence, are habitually resident here; to bodies incorporated under the law of a part of the United Kingdom with a registered office address here; or to situations where part of the chain of events amounting to the offence take place here, for example, an e-mail making arrangements being sent from the North. The Department advises that the Bill makes provision for jurisdiction in respect of offenders who are habitually resident in the North in accordance with the EU directive. Are there any issues on which you feel that you can provide clarification, or are you happy enough with the commentary we have provided?
985. **Mr Simon Rogers:** I do not think that we see an issue there, but it is worth reflecting on a case in which an offence was detected in Northern Ireland but involved offenders from Scotland. The two prosecution services were able to co-operate to enable the prosecution to take place in Scotland. So, there are arrangements between the different prosecuting authorities to manage cases of that nature.
986. **Mr Elliott:** Is that arrangement built into legislation or is it an arrangement between the two jurisdictions?
987. **Mr Simon Rogers:** It is an arrangement.
988. **Mr Elliott:** So there is no legislative basis for it.
989. **Mr Simon Rogers:** No.
990. **The Deputy Chairperson:** The Human Rights Commission raises an issue around the requirement in article 10 of the EU directive for the UK to establish jurisdiction over offences concerning trafficking human beings where the offence is committed in part within the United Kingdom. The commission notes that sections 109 and 110 of the Protection of Freedoms Act 2012, which extends to England and Wales, contain a provision that a non-UK national will be culpable for the offence of trafficking for sexual, labour and other exploitation under the legislation if any part of the arranging or facilitation takes place within the United Kingdom. Can the Department outline its position on that?
991. **Mr Simon Rogers:** We feel that we have covered the situation. It is quite complex legislation, and a lot of these questions are about things that we think are covered by it. Obviously, they are trying to establish whether that is so. Our approach to that is the same as that in England, Wales and Scotland.
992. **The Deputy Chairperson:** CARE highlights that if provision for training and the availability of investigative tools are not contained in the Bill, there is a risk that those services will be subject to cuts. The Department does not consider that that needs to be on a statutory basis and points out that training and investigative tools are already available. Disability Action states that the training and investigative tools for police and prosecutors need

- to be improved. In its response, the Department details the training that has been carried out and the training that is due to be carried out. The Department has also advised that a mapping exercise will be undertaken on human trafficking-related training.
993. Are members content with the Department's position not to provide for training and investigative tools in the Bill?
994. I move now to convictions, disposals and sentencing. I refer members to the Department's covering letter, which covers the issue. I ask officials to outline the Department's position.
995. **Mr Simon Rogers:** In the letter, we highlight a couple of things, one of which relates to the sentencing options in the Magistrates' Court. The letter highlights that, at the previous session, we were under the impression that the sentence was 12 months in England and Wales, compared with six months here. We have since established that it is six months in England, Wales, Northern Ireland and Scotland.
996. Another couple of issues were raised, one of which related to minimum sentences. We addressed that in the covering letter. I think the other significant factor is around the determination of the Committee that we would apply a strict standard to human trafficking, given the nature of the offence. I have already mentioned that the Minister has asked us to look at whether the offence should be indictable only, rather than triable either way. I think that they are the headlines on the sentencing and offence front.
997. **The Deputy Chairperson:** Are members content that an offence for human trafficking should not carry a minimum sentence, or is it something that you wish to return to? We will come back to it.
998. I ask officials to work through the individual issues raised by respondents and the Department's responses in the order listed in the table under the heading "Prosecution".
999. **Mr Simon Rogers:** CARE in Northern Ireland raised the issue that a prosecution should not be dependent on the report or accusation of the victim. Our response sets out that that is not necessary. Obviously the prospect of conviction is much greater if the victim is co-operating or giving evidence, but that is not essential in taking forward a prosecution.
1000. **Ms Pritchard:** A related issue was raised by NICEM, which thought that it would be necessary to amend the legal framework as the EU directive calls for the non-prosecution of victims. NICEM thought that that would not be possible due to the Justice (Northern Ireland) Act 2002. That is not the case in Northern Ireland. When the Public Prosecution Service is considering a case, it will take into consideration the extent to which the victim has been coerced to commit an offence. It will consider whether it is in the public interest to go ahead with the prosecution. So, the stance NICEM has taken is not quite accurate.
1001. **Mr Simon Rogers:** The final comment under this heading is from the NSPCC, which highlights that non-governmental organisations will often have greater experience of victims, etc. Our response points to the recently announced engagement group, which David Ford has set up to engage with non-governmental organisations on a formal basis to discuss issues like awareness, training and support for victims.
1002. **The Deputy Chairperson:** Do members have any questions or queries about the Department's approach?
1003. I am going to move on to protection, assistance and support for victims. I ask officials to respond to the comments of CARE and Disability Action.
1004. **Ms Pritchard:** The first issue raised by CARE relates to the special measures that are available to witnesses under the Criminal Evidence (Northern Ireland) Order 1999. We say that there already is provision under the order for witnesses, where they are involved in trafficking cases involving sexual exploitation, to

- be automatically considered to qualify for special measures. The background to that automatic eligibility provision is that, in cases of a sexual nature, people may be required to talk about matters of an intimate detail. That is why they automatically qualify. Victims of labour exploitation cases will also be considered for special measures. It is the same for those who are witnesses in sexual exploitation cases. At the end of the day, the provision of special measures in any particular case is a matter for the judge, depending on the nature of the case.
1005. **The Deputy Chairperson:** Thank you. Does anybody have any queries?
1006. **Ms Pritchard:** Sorry, it might be helpful if I just add that the Department is considering putting in place further measures when it amends its guidance on achieving best evidence in criminal proceedings. It will specify that victims of human trafficking should be regarded as falling within the definition of an intimidated witness. We plan to include a specific section on human trafficking victims in guidance on working with intimidated witnesses.
1007. **The Deputy Chairperson:** Thank you.
1008. **Mr Elliott:** Chair, I have one issue. I notice that the Department's response states:
- "The Department considers that it is not appropriate to create a hierarchy of victims and offences and that eligibility should be based on an individual assessment of each case."*
1009. To be fair, I thought that that was what CARE was saying — that it should be based on individual aspects. I think it is a bit unfortunate that that terminology was used there, because my understanding is that it should be on a case-by-case basis. I thought that was what CARE was saying, as opposed to the Department's inference that it is almost creating sections of victims.
1010. **Ms Pritchard:** Our understanding of the CARE position is that it was looking for human trafficking victims to automatically qualify as special witnesses, rather than each case being treated on a case-by-case basis.
1011. **Mr Elliott:** On that point, then, are the control mechanisms within the Department reasonable? Do they give enough protection to people on a case-by-case basis?
1012. **Mr Simon Rogers:** We think the current provision does do that, because an application can be made, but the decision then rests with the judge. On labour exploitation, say, the judge could give special measures and determine that video evidence, etc, could be given, but it is down to the judge. Our point about the hierarchy was simply that if we pick out labour exploitation, why are we not suggesting that there should be automatic cover for certain other types of offence as well? Our view was that, rather than pick off different areas in a piecemeal way, we might be better leaving it to the judge.
1013. **Mr Elliott:** Provided that is working — that is my point. Obviously, CARE has highlighted something that it thinks is not working. Provided that is working, that is fine, but if it is not, I think that it will need to be revisited.
1014. **The Deputy Chairperson:** This is the first reading of the paper, but we will return to it, so you will have an opportunity to raise that issue again.
1015. I will move on to the issue of trafficking children. A number of issues raised by the Children's Commissioner, CARE and the NSPCC fall within the responsibility of health trusts, as recovered child victims of trafficking and those suspected of trafficking are deemed to be "children in need". The Department has referred the relevant papers to the Department of Health, Social Services and Public Safety (DHSSPS). Will you update us on that?
1016. **Ms Pritchard:** We have had no response back yet from the Health Department. We are assuming — I will check this for the Committee and come back to the Committee Clerk — that DHSSPS will engage directly with the Children's Commissioner and the NSPCC.

1017. **The Deputy Chairperson:** Will they report back to you as well?
1018. **Ms Pritchard:** No; responsibility for dealing with child victims is entirely a DHSSPS matter, but it has been liaising with us on the EU directive and Lord Morrow's Bill. As regards the detail of how children are looked after, responsibility falls to it and not the Department of Justice. If the Committee would find it helpful, I am happy to take that up with the Health Department to check what action it is taking on the issues that have been raised.
1019. **The Deputy Chairperson:** OK, thank you.
1020. The NSPCC highlights awareness-raising as an issue in relation to the trafficking of children. The Department advises that awareness of human trafficking was highlighted by the Blue Blindfold campaign, which relaunched last year, and further work on awareness-raising will be considered by the human trafficking engagement group. The Department also refers to a multilingual leaflet and poster developed by the Organised Crime Task Force and targeted at potential victims. Has the Department any view about the processes in place for awareness-raising?
1021. **Mr Simon Rogers:** A large part of that falls into the training category, where the emphasis is on first responders, as they are called, such as the police, health workers, etc, to try to ensure that if they come across victims, they will recognise them. However, we are always conscious that there is more to be done on awareness-raising, and that is precisely one of the issues that we want to put into the engagement group involving the non-governmental organisations, because they are putting a lot of energy into trying to raise awareness on the ground. There are a lot of conferences, which a number of people here have been to. In a way, we are trying to harness that energy and use it to increase awareness in particular areas, and we are conscious that there are always new aspects to look at. It may be awareness among taxi drivers or hauliers, etc. There are always new groups coming up with which we want to look at additional awareness-raising. Awareness-raising is a constant theme, if you like, at the back of human trafficking. Certainly, training and the engagement group are two significant parts of that.
1022. **The Deputy Chairperson:** Is there anything specific with regard to children, or is that a part of the broad general campaign around human trafficking?
1023. **Ms Pritchard:** Work done recently by the PSNI and Barnardo's was, I think, partly funded by the Department. If it would be helpful, we will write to the Committee with details of that.
1024. **The Deputy Chairperson:** Thank you. Are there any queries or are members content with the approach?
1025. I move on to the question of the rapporteur. CARE calls for the provision of a national rapporteur or an equivalent mechanism that is independent of government and reports publicly. The Department highlights that the EU directive does not require a national rapporteur or equivalent mechanism to be independent of government. It advises that the interdepartmental ministerial group (IDMG) fulfils this function for the United Kingdom and published its first annual report on human trafficking in October 2012. The Department goes on to detail the scrutiny of the response to human trafficking here and the outcomes of various reports. It highlights one recommendation made in the Group of Experts on Action against Trafficking in Human Beings (GRETA) report that is relevant to here. This calls on the PPS to promptly issue guidance on trafficking offences. It is hoped that the guidance will be published before the end of the year.
1026. Are you satisfied that the current provision is as strong and robust as one that is independent of governmental structures?
1027. **Ms Pritchard:** I think that the Minister has indicated that he would like to see how the IDMG functions and performs

- the role. It has only just published its first annual report in October, which contained quite a lot of detail about what is going on in relation to human trafficking. From our point of view as well, there is quite a lot of independent scrutiny in the human trafficking area through GRETA itself, the US trafficking in persons reports and the Anti-Trafficking Monitoring Group, which reports every year. Of course, there is scrutiny from the Justice Committee and the Assembly all-party group on human trafficking. I understand that a British-Irish Parliamentary Assembly Committee is also carrying out scrutiny of human trafficking, and the Minister is giving evidence to it on Monday. So, there is quite a range of work outside government, and a lot of scrutiny going on. I understand that the PPS guidance will be available early in the New Year.
1028. **The Deputy Chairperson:** Thank you. The issue of a rapporteur is something that we will return to. We are content with the approach to date, but there is that reservation.
1029. I turn to public protection arrangements. The Association for the Care and Resettlement of Offenders (NIACRO) seeks clarification as to whether consideration has been given to the impact of the new offences on the public protection arrangements. The Department advises that clause 5(3) (a) and clause 5(3)(b) of the Criminal Justice Bill add a new offence of trafficking outside the UK for sexual exploitation to schedules 1 and 2 to the Criminal Justice Order 2008. Can you explain what impact that will have on new offences and how that is addressed by the order?
1030. **Mr Simon Rogers:** I am smiling because that is quite a complicated question for someone who is not an expert. What it means in effect is that the judge can consider, when looking at these cases, the issue of dangerousness. If he determines that the defendant falls into that category, that can trigger an indeterminate sentence or an extended custodial sentence, with future release determined by the Parole Commissioners. So, in effect, what it means is that, instead of 14 years being the maximum sentence available in these particular cases, the maximum can now exceed that. It is almost like an aggravating feature; it can make the offence more serious if the judge feels that the defendant falls into that category. In both cases that we have had to date, the Pis and Chen cases, judges looked at that issue and determined that they did not fall into that more serious category and, therefore, dealt with them using the 14-year maximum sentence. However, that provision does what NIACRO asks about. It brings them into the new public protection arrangements for sexual offences.
1031. **The Deputy Chairperson:** OK. Are members content with that approach?
1032. **Mr Elliott:** It is a reasonable explanation for someone who is not an expert. *[Laughter.]*
1033. **Mr Simon Rogers:** Thank you.
1034. **The Deputy Chairperson:** I turn now to the duty on public bodies, and the Policing Board's view on that. In the previous Justice Bill, the Committee and, indeed, the Assembly, did not go for the statutory duty. Again, I think that we will return to that. Is everybody content that we move on?
1035. On hybrid offences, the Public Prosecution Service highlights that the new offence created in clause 5 of trafficking outside the UK for sexual exploitation is a hybrid offence and needs to be added to the list of hybrid offences that the Director of Public Prosecutions may refer to the Court of Appeal if he considers that a sentence is unduly lenient. The Department advises that the Minister intends, with the Committee's agreement, to bring forward secondary legislation to add trafficking for non-sexual purposes to the schedule of offences that are referable to the Court of Appeal on the grounds of unduly lenient sentences and to make a new offence of trafficking for sexual exploitation fully referable.

It highlights that trafficking for current sexual exploitation offences is already covered. Are members content with that approach?

week's meeting in order to assist the Committee staff.

1036. We will move on to data collection. Disability Action raises a number of issues on data collection and urges the Committee to call for better statistics and information on the extent of the problem of trafficking of disabled people. The Department recognises data collection as an issue. It advises that both it and the Organised Crime Task Force's immigration and human trafficking subgroup will work with the Home Office and the UK Human Trafficking Centre on improving data collection. Are members content with that?

1037. **Ms Pritchard:** I would just add that there was a meeting in the Home Office last week. It has been agreed that a specific group will be set up to look at data collection. It will be chaired by the Home Office but led by the UK Human Trafficking Centre, which is the centre responsible for compiling the statistics. I represent Northern Ireland on that group. When I was at the meeting, I raised the concerns that were raised by Disability Action. We will look at that. We will also be looking at it on a Northern Ireland level through our own human trafficking subgroup.

1038. **The Deputy Chairperson:** OK. Thank you very much. Before we thank the officials, does anyone have any broad questions that they want to ask? If not, I thank Simon, Amanda and Debbie for their presentation this afternoon.

1039. We covered a fair bit of ground this afternoon. At this stage, if people have any first or general impressions about other issues that they might wish to revisit, we could take some time to do that. I advise members that, next week, we will continue clause-by-clause deliberations on the DNA and fingerprinting clauses of the Bill. So, if there are any general views or issues that somebody wants to come back to or re-examine, we can do so. We certainly cannot do that today. Perhaps we should table that for the beginning of next



## 15 November 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Stewart Dickson  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr William Humphrey  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone  
 Mr Jim Wells

### Witnesses:

Mr Gary Dodds *Department of Justice*  
 Mr Ian Kerr

1040. **The Chairperson:** I welcome Ian Kerr and Gary Dodds from the police powers and custody branch of the Department.
1041. Annex B contains 40-plus pages of comments and responses. The Committee Clerk has pulled together the key points that summarise each of the areas. I intend to go through those key points. I will then open the meeting up to any members who want to comment on that particular section, and I will then move on to the next element. If members are content with that approach, we will take it in that fashion.
1042. The first general comments that I will highlight relate to pages 1 to 7 of annex B. I will read out the comment and the response by the Department. This is not all the comments, but it summarises them. In the opinion of the Northern Ireland Human Rights Commission, the Department has been mindful of the ruling of the European Court of Human Rights in the case of *S and Marper v the United Kingdom* when developing the retention proposals, and it recommends that the Committee considers whether the Bill meets the Department's objective of seeking a proportionate balance between the rights of the individual and the protection of the public. Responding to that, the Department has advised that retention is for the sole purpose of the protection of the public, focused on preventing and protecting crime. Material may be retained indefinitely only on the basis of a conviction for an offence serious enough to carry a custodial sentence. Where conviction is not the outcome, material may be retained only in relation to the most serious offences, but for a strictly limited period. The Department considers that that is where the appropriate balance lies.
1043. The Children's Law Centre highlighted that the original responses to the Department's consultation were not published and gave its view that the Department has taken little or no cognisance of the responses that it received and the human rights concerns raised. The Commissioner for Children and Young People also shares concerns that few of the issues that she raised in the consultation have been addressed. In response, the Department advised that the original responses were not published, although they were shared with the Committee. The Department confirmed that it has now published the summary of consultation responses on the departmental website. It also states that it did look carefully at the concerns raised in the consultation.
1044. Disability Action stated the importance of the collection and monitoring of data relating to the retention and disposal of fingerprints and DNA to ensure that people with disabilities are not disadvantaged. The Department has advised that it will discuss monitoring and information gathering with the Police Service and Forensic Science Northern Ireland.
1045. The Northern Ireland Policing Board and the Police Service highlighted the cost implications of the proposed

- retention framework. The Department confirmed that money has been included in the policing budget for that purpose, although it was for an earlier financial year. The Policing Board questioned whether consideration had been given by the Department to the introduction of legislative framework for the retention of photographs by the PSNI. Responding, the Department confirmed that the Association of Chief Police Officers had set up a working group, on which the PSNI is represented, to bring the management of police information guidelines into compliance with the European Convention on Human Rights (ECHR). The retention of photographs is carried out under those guidelines, and the PSNI will implement agreed best practice. The Department is satisfied with that outcome and does not intend to bring photographs within its retention framework.
1046. That covers pages 1 to 7. Are members content to note the Department's responses to those issues that are raised in respondents' comments, or do members have any particular issues relating to pages 1 to 7 that they want to raise?
1047. With regard to the cost implications of the framework on the budget for the Policing Board, your response indicated that it was for an earlier financial year.
1048. **Mr Ian Kerr (Department of Justice):** That is right.
1049. **The Chairperson:** I assume that it will be available when it comes in.
1050. **Mr Kerr:** Yes; when the police were not in a position to use it because of the delay in implementing the framework, it was surrendered as an easement, so it has gone back into the pot. It means that they will have to bid for it again when the time comes. However, I have no doubt that it will certainly be viewed sympathetically by the Department.
1051. **Mr McCartney:** May I have clarity on one point? Today, we are not going to be asked to lay out amendments or opposition; we are just dealing with general issues?
1052. **The Chairperson:** We are just looking at it generally. However, if there are general comments to be made, or if there are concerns or areas where you need more information, now is the time to raise them. At the next stage, we want to be at a point where we are looking at amendments.
1053. We have noted pages 1 to 7. Using the same approach, I will run through pages 7 to 18 of Annex B: Human rights standards. There were several submissions, including those from the Children's Law Centre, the Women's Support Network and Dr Linda Moore from the University of Ulster, which raised concerns that provisions in the Bill, as they relate to children, are disproportionate, unjustifiable and in potential breach of children's rights standards. As you will see on page 9 of the table, the Women's Support Network highlighted article 40 of the United Nations Convention on the Rights of the Child (UNCRC), which places an obligation on state parties to recognise the rights of all children, even those who have infringed penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and in a way that takes into account the child's age and the desirability of promoting the child's re-integration and the child assuming a constructive role in society.
1054. In oral evidence, the Children's Law Centre suggested that there may be scope to apply articles 63D and 63E to adults only and that if it was the mind of the legislature to try to retain any DNA and fingerprints of children and young people, which the Children's Law Centre opposes, then a child-specific clause could be created.
1055. Responding to that, the Department considered that the Bill's provisions are sufficiently limited and targeted to be consistent with the safeguards required by the UN convention and that the retention periods for material from under-18s reflect the judgement as to where the balance lies. In its cover note at annexe A, the Department indicates that it is satisfied that it is necessary,

- proportionate and reasonable to retain biometric material to the extent permitted in the framework for the detection of crime, the protection of the public, and, ultimately, in the best interests of victims, who are also often children, and offenders alike.
1056. In the cases of juveniles who have been convicted of serious or repeat offending, the Department considers that indefinite retention is appropriate, in line with general policy, and points out that the Bill also provides that young people who are convicted of a first minor offence will have their data retained for an individually tailored period of between five and 10 years only. The Department states that in cases where there has been no conviction, research does not support a shorter DNA retention period for juveniles than for adults, pointing out that the future offending risks for juveniles are, in fact, higher than they are for adults. Do members want to make any comment on that point?
1057. **Mr McCartney:** That is something that we will want to return to. I know that the Department's position is that the Bill, as proposed, reflects the balance between the public and private interests, and we have a few amendments to table in relation to that.
1058. **The Chairperson:** OK, so that is one area that we can put down for further engagement.
1059. The Children's Law Centre and the Children's Commissioner raised concerns about the stigmatising effect that proposals will have on children and young people. The Northern Ireland Human Rights Commission also raised the issue stating that in light of the emphasis placed on the stigmatising effect of DNA retention by the ECHR and the importance that the UNCRC places on promoting a child's sense of dignity and worth, it considers that a strong evidence case, demonstrating that the arrangement regarding the retention of DNA material of children assists in the prevention of crime, must exist. The commission suggested that the Committee may wish to seek information from the Department on that matter.
1060. Responding, the Department, in its cover note at annexe A, points out that retention is aimed at the prevention and detection of crime; that it cannot be equated to a criminal record; that it will never be disclosed; and that it does not cut across the Department's considerable efforts to divert young people away from the criminal justice system or to deal with them in an appropriate manner, should they come within it. The Department states that it examined cohort studies of youth re-offending in Northern Ireland carried out in 2007 and 2008, and details of the findings are provided in the table on page 11.
1061. **Mr Kerr:** Those studies are available on the Department's website.
1062. **The Chairperson:** In the Children's Commissioner's response to the Department's consultation, she suggested that consideration should be given to reviewing the retention of young people's DNA and fingerprints once they reach 18 so that they are given an opportunity to enter adulthood with a clean slate. Responding, the Department points out that a similar recommendation in relation to criminal records has been made in the youth justice review context. In the context of removing obstacles to future employment and rehabilitation in society, it highlights, however, that the purpose of criminal records and the DNA and fingerprints databases are different and confirms that there is no question of anyone ever having to declare retention of their DNA or fingerprints. The Department also draws attention to the draft guidance for forensic science by the Attorney General, which recommends a review, after 10 years, of retention material taken from juveniles in all cases.
1063. If members do not have any comments to make on those two areas, I will move on.
1064. On the minimum age of criminal responsibility, the Children's Law Centre,

Dr Linda Moore of the University of Ulster and the Children's Commissioner raised concerns about the application of the provisions in the context of the current age of criminal responsibility of 10 years of age. Pages 14 to 16 of the tables refer to this. The Department has indicated that it intends that the retention framework should apply to anyone who has reached the age of criminal responsibility, which is currently age 10. Any future change to the age of criminal responsibility would be reflected in the operation of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE), and, therefore, the application of the retention framework. Have members any comments on that area?

1065. **Mr McCartney:** I have a general comment on the age of criminal responsibility of 10, and we will come back to that.
1066. **The Chairperson:** The Commissioner for Children and Young People suggests that careful consideration should be given as to how a young person under 18 will be supported to undertake an appeal against an extension to the retention period. The Department states that any process in the Bill that may involve an appeal to the courts will attract the normal legal assistance appropriate in such cases. Are members content to note that?

*Members indicated assent.*

1067. **The Chairperson:** On the Department of Justice equality impact assessment (EQIA), the Children's Law Centre was concerned that following equality screening of the policy proposals, an impact assessment was determined not to be required. Dr Linda Moore of the University of Ulster, Opportunity Youth and the Children's Commissioner highlighted concerns about the potential disproportionate negative effect that the provisions will have on children and young people.
1068. The Department states that following a detailed screening exercise, no adverse impact on any section 75

category was identified, reflecting the fact that the proposals increase the protections available to all groups. It is the Department's view that provisions actually discriminate positively in favour of young people in providing for reduced retention in respect of a single, minor offence. Do members have any comment on that area?

1069. **Mr McCartney:** We expressed the view previously about the need for an EQIA, but it is not necessary to raise that today.
1070. **The Chairperson:** Schedule 2 deals with articles 63B to 63O of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted. The schedule inserts 14 new articles after article 63A of PACE NI to replace the existing framework governing the retention and destruction of fingerprints, DNA samples and profiles and other samples, referred to generally as biometric material taken from a person under the powers of PACE NI or in cases where such material is provided voluntarily. Issues raised in relation to each article will be discussed in the order in which they appear in the Bill.
1071. Article 63B is 'Destruction of fingerprints and DNA profiles: basic rule'. GeneWatch UK is concerned that the discretionary powers of the Chief Constable in relation to the destruction of material will be problematic where individuals dispute the circumstances of their arrest or collection of their DNA or fingerprints. It recommends that such determinations be made by a third party or may be appealed to a third party. The Department states that 63B(3) provides that material must be destroyed if it appears to the Chief Constable that the taking of it was unlawful or based on mistaken identity. The Chief Constable is expected to be proactive in this regard, but there would be nothing to prevent an individual, who was convinced that his or her material had been taken in such circumstances, from applying to the Chief Constable to have the material destroyed, and any refusal to do so could be challenged by judicial review. Have members any comment to make on that aspect?

1072. **Mr McCartney:** I have one issue around 63B(2). In circumstances where an arrest is unlawful or the taking of the material is deemed unlawful, the material can still be retained. We have an issue with that, and we will come back to that.
1073. **The Chairperson:** Article 63C is on the retention of article 63B material pending investigation or proceedings. GeneWatch recommended that the wording of this section should be clarified, so that individuals who have been ruled out of further inquiries do not have their data retained indefinitely in circumstances where a case is not closed. That is to say when an investigation may be continuing — perhaps for years — but the individual has been eliminated from inquiries. Members can have a look at the cover note on the issue at annex A, and I will ask officials to outline the current position.
1074. **Mr Kerr:** As we mentioned when the issue was raised with us, there is a slight complication with the Attorney General's wishes on that point, when material taken from an individual may be used not necessarily against that individual but against someone else involved in the case. We discussed it with the Attorney General, and, on foot of those discussions, have prepared instructions for the draftsman to seek a formulation that links retention to the perceived utility of the material rather than to the conclusion of the investigation. Once the police have established that the material is of no further interest to them, there is no further reason to retain it, and it will be destroyed. Is that satisfactory, Mr McGlone?
1075. **Mr McGlone:** Yes, thanks.
1076. **The Chairperson:** Once we get the wording of that amendment, we can come back to deal conclusively with that aspect. When do you intend to have the specific wording of that amendment?
1077. **Mr Kerr:** Unless there are further amendments on the back of this evidence session, which seems unlikely, those instructions will go to the draftsman without further ado, and they are normally turned around fairly quickly. We will get draft amendments to you within the next fortnight.
1078. **The Chairperson:** Article 63D is “Retention of Article 63B material: persons arrested for or charged with a qualifying offence”. A number of the organisations that provided submissions on the retention framework highlighted concerns about the retention provisions in article 63D as it applies to a person who is arrested for or charged with a qualifying offence but is not convicted of that offence. The table provides details of the issues that were raised, and I will work through each one.
1079. On undermining the presumption of innocence and proportionality, the Human Rights Commission suggests that the Committee consider whether the provisions appropriately safeguard the presumption of innocence. The Children's Law Centre, the Commissioner for Children and Young People, Opportunity Youth and the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) believe that the provisions significantly undermine the presumption of innocence and due process. The Evangelical Alliance recommends that the provisions are amended to ensure that, when individuals are acquitted of a crime, their DNA sample and fingerprints are destroyed immediately. GeneWatch UK questions whether retention for a period of three years is necessary and proportionate for people who have been arrested and not charged with a qualifying offence or whether retention for three years should be restricted to those charged. The Human Rights Commission also recommends that the Committee consider the circumstances in which a person who has been arrested but not charged may have his or her DNA retained and to request details of the individual basis informing that approach.
1080. In response, the Department is satisfied that some degree of retention in those circumstances is necessary

in the interests of public protection and has sought to put in place a risk-based system that is balanced and proportionate. When conviction is not the outcome, material will be retained only in cases involving serious offences and for a limited time. Safeguards will be put in place so that retention in cases involving an arrest but no charge will require independent consent. The Department goes on to confirm that a significant volume of material from those arrested but not convicted will be destroyed and that the database will be primarily populated by those with previous convictions. The Department also highlights that that was the specific point on which the European Court of Human Rights made favourable reference to the practice in Scotland. So the court countenanced retention other than solely on conviction. Do members have any comment on the area of undermining the presumption of innocence and proportionality?

1081. **Mr McCartney:** We have some issues, but the broad comments that you read out will guide us.
1082. **The Chairperson:** The Human Rights Commission, the Children's Commissioner, the Children's Law Centre and NIACRO highlight concerns that the prescribed circumstances referred to in article 63D are not outlined in the Bill and have stated the need for greater clarity on that. The PSNI is concerned about the definition of "prescribed circumstances" and wants to ensure that it reflects the provision in the Protection of Freedoms Act 2012 as closely as possible to give maximum protection in the framework. Members should look at the cover note at annex A, which covers that issue. I ask officials to outline the current position.
1083. **Mr Kerr:** That recommendation was made by a number of our consultees and the Attorney General, but when we finally heard from the Northern Ireland Examiner of Statutory Rules, we decided that it was time to relent, and we would incorporate the provisions in the Bill instead of in the order as originally proposed. The issue for us concerned
- the ability to amend the precise terms of the prescribed circumstances on the off chance that, in light of operating the system, we needed to revise that. We did not want to have to wait to find another Bill in which to do that. The Examiner of Statutory Rules suggested — we are happy to take his advice — that we incorporate those in the Bill but take within the Bill an order-making power to amend those by subordinate legislation if necessary. Again, as I mentioned, there are prepared instructions for the draftsman to bring those provisions within the Bill and a broadly equivalent provision to section 3 of the Protection of Freedoms Act 2012, which sets out the prescribed circumstances and the procedure for applying to the commissioner for retention in those circumstances.
1084. **The Chairperson:** Members, if you are content with that, once we get the final drafting, we can come back to it with a definitive view, unless members have any other comments.
1085. We will move on to the appeals section. The Human Rights Commission suggests: *"that information on the grounds upon which an order may be sought or on which an appeal may be brought should be requested."*
1086. In response, the Department states: *"Grounds upon which an order may be sought would be an operational matter for the police. It would be for them to make the argument on a case-by-case basis, to the satisfaction of the courts."*
1087. Are there any comments from members on the appeals section?
1088. On the biometric commissioner, the Human Rights Commission states that a guarantee: *"in the legislation that the biometric commissioner will carry out his or her responsibilities in a manner that is compliant with the human rights obligations of the United Kingdom is required. There should therefore be a statutory statement to that effect."*
1089. Responding, the Department states:

*“The biometric commissioner will be a public authority and will be obliged to observe the ECHR. The amendment proposed by the NIHRC is therefore not required.”*

1090. Opportunity Youth states that it:

*“fundamentally disagrees with the need for the introduction of a Biometric Commissioner and believes that the courts should be the ultimate arbiter of what should or should not be retained.”*

1091. Again, I refer members to the cover note at annex A. I ask officials to outline the current position.

1092. **Mr Kerr:** As set out in the note, when the Bill was introduced, we gave an undertaking to explore that matter and are quite open to putting it the way of the courts, but much will turn on the actual volume. Without experience of operating the framework, the police are simply at a loss to be able to put a figure on that, and without any sort of firm figure, the courts are, understandably, reluctant to take it on without a commitment to additional judicial resources. We think that the best way forward at this stage is to go ahead with the commissioner as proposed, but with an undertaking to keep the matter under review. If, as the police seem to think likely, business tails off once the system beds in and we find that we are perhaps dealing only with a handful of such cases a year, we can look again at putting that the way of the courts when it may make better sense to do so.

1093. **The Chairperson:** Do members have any comments?

1094. **Mr McCartney:** We have previously outlined our issues around the commissioner, and we can return to the matter.

1095. **The Chairperson:** Article 63E is “Retention of Article 63B material: persons arrested for or charged with a minor offence” and article 63F is “Retention of Article 63B material: persons convicted of a recordable offence”. Articles 63E and 63F will be considered together, and details of the issues raised in relation to

those articles are detailed in the table. Members may want to refer to annex C, which is a list of recordable offences that were provided by the Department and which relate to articles 63E and 63F. The first area is necessity, proportionality and the scope of recordable offences. There were a number of submissions questioning the necessity and proportionality of the provisions to retain material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. The Human Rights Commission highlighted that the definition of recordable offences includes a wide range of offences and suggests that the Committee may wish to consider whether periods of retention should be staggered, depending on the seriousness of the offence. The commission is concerned that a blanket approach is vulnerable to future legal challenge. NIACRO shares those concerns and recommends that the legislation is not commenced until after the outcome of an anticipated Department review of the scope of recordable offences. Opportunity Youth suggests a tighter definition of qualified recordable offences rather than a catch-all approach.

1096. Members will be aware of the case yesterday, or two days ago, and the recent judgement in the High Court by Lord Justice Girvan, that the rules on the policy of indefinite retention of data of convicted offenders by a substantial category of offences is not disproportionate and is lawful and entirely rational. There is a copy of the newspaper article of that judgement in the tabled pack. I ask the officials to outline the findings in this case, its relevance to the provisions in the Bill and the Department’s position on the issues raised by the organisations on that part of the Bill.

1097. **Mr Kerr:** From the Department’s perspective, the judgement is very welcome. It identified the factors that it needed to take into account in considering the question of

- proportionality, and it identified 11 in all, only one of which focused on the particular circumstances of the case. The rest considered the issue generally and so are of general relevance. The judgement was completely unequivocal. As you said, the build-up of the database of those convicted was an entirely rational step and furthered the legitimate aim of countering crime in order to protect the lives and rights of others. It could not be considered blanket or indiscriminate, because it ruled out those not convicted and those convicted of lesser offences, of which there are many. It drew out the very limited impact of the retention and use of such material on a person's "real private life", which was the term it used. Having dealt with the proportionality issue, it gave a nod to Strasbourg's recognition of the justification for limited retention, even in the cases of some unconvicted persons, i.e. the basis for referral to the Scottish model. All in all, we see it as a vindication of the Department's policy as set out in the Bill and, indeed, the practice in the other UK jurisdictions.
1098. **The Chairperson:** Have members any comment on the area of necessity, proportionality and scope of recordable offences?
1099. **Mr McCartney:** Again, it is something that we will be visiting.
1100. **The Chairperson:** We move on to appeals and complaints. The Human Rights Commission considers that it would be good practice to provide a right for individuals to apply for the destruction of their fingerprints and DNA. The commission wants a procedure whereby the court or, in the first instance, the biometric commissioner has a clear process through which a petition will be assessed according to clear criteria. Based on that answer, if it continues to be negative, the person should have a route not into the High Court but into a lower court where the costs are lower and the proceedings are more efficient, straightforward and speedy. The commission highlights the fact that
- the current position, whereby judicial review is the only appeal to the Chief Constable's decision, is one of the least efficient and most expensive ways to get justice. Opportunity Youth also seeks further clarification around the appeals process.
1101. Responding, the Department states that the question of review:
- "is open to anyone — under the current system and under the proposed framework — to apply to the police to have their material removed. No specific review mechanism is included within the framework because any refusal by the police to remove material from the database would be challengeable by judicial review and the Department has always been of the view that that should be sufficient."*
1102. Do members have any comments?
1103. Article 63G is "Retention of Article 63 B material: persons convicted of an offence outside Northern Ireland". No issues were raised in relation to article 63G of schedule 2, unless members have any comments that they wish to make.
1104. Article 63H is "Retention of Article 63B material: exception for persons under 18 convicted of first minor offence". The Children's Law Centre is concerned that article 63H:
- "proposes to link the amount of time that a child or young person's fingerprints or DNA are retained to the length of their sentence, where the child is being convicted of a first minor offence."*
1105. **The Children's Law Centre contends:**
- "Article 63H also allows for the retention of fingerprints and DNA where children are given non-custodial sentences in respect of a first minor offence."*
1106. It does not believe that this is a proportionate response. The Children's Law Centre:
- "also questioned whether there is potential for the fingerprints and DNA to be retained for 5 years for a child who receives their first caution."*
1107. Responding, the Department has confirmed:



- “A caution is treated as a conviction for the purposes of the retention framework. In the case of a juvenile receiving a caution for a first, minor offence, the framework allows the material to be retained for up to five years, at the discretion of the police.”*
1108. Do members have any comments?
1109. **Mr McCartney:** Again, the issue of juvenile courts is an area that we will be exploring.
1110. **Mr Elliott:** The Children’s Law Centre:  
*“also questioned whether there is potential for the fingerprints and DNA to be retained for 5 years for a child who receives their first caution.”*
1111. Is the centre questioning whether that is possible, or is it just questioning the merit of it? I do not understand the point that it is making.
1112. **The Committee Clerk:** When it put in its evidence, the centre was putting it as a question as to whether that was the case.
1113. **Mr Kerr:** It was seeking clarification; that was our interpretation.
1114. **Mr Elliott:** OK.
1115. **The Chairperson:** Article 63I is “Retention of Article 63B material given voluntarily”. No comments were made about that article, unless members wish to comment on it now.
1116. Article 63J is “Retention of Article 63B material with consent”. Again, no comments were made about this article, unless members wish to comment on it now.
1117. Article 63K is “Article 63B material obtained for one purpose and used for another”. No comments were made about this article, unless members wish to comment on it now.
1118. Article 63L is “Destruction of copies”. GeneWatch UK states:  
*“this provision allows police to retain copies of DNA profiles provided the individual cannot be identified ... but in practice anonymising DNA profiles may be impossible.”*
1119. GeneWatch UK recommends that the:  
*“use of batch files created at Forensic Science Northern Ireland (FSNI) is clarified, preferably with the assistance of the Information Commissioner’s Office”.*
1120. In the table, the Department addresses the issues raised by GeneWatch UK and cites correspondence from the chairman of the National DNA Database Strategy Board confirming the Information Commissioner’s satisfaction with the procedures that are in place. Do members have any comments to make?
1121. Article 63M is “Destruction of samples”. GeneWatch UK indicates that the provisions for the destruction of samples were in line with international best practice.
1122. Article 63N is “Use of retained material”. GeneWatch UK is concerned about:  
*“the phrase ‘purposes related to’ the prevention or detection of crime as it can be interpreted broadly and is open to abuse.”*
1123. GeneWatch UK recommends that an additional clause is added to prevent any unethical research.
1124. In response, the Department states:  
*“There is nothing in a DNA profile that definitively identifies any characteristic other than gender. Much more information — for example, about race or health — is available from the biological DNA sample and it is expressly in recognition of the sensitivities around that that the Bill provides for samples to be retained for no longer than 6 months, unless likely to be needed in proceedings.”*
1125. Do members have any comments about that?
1126. GeneWatch UK is also concerned that the use of material to identify the person to whom the material relates is also open to abuse. The Department considers that confirming a person’s identity or, indeed, establishing that he or she has previously been arrested under a different name are entirely legitimate uses of biometric material. Have members any comments?

1127. Article 630 is “Exclusion for certain regimes”. No comments were made or issues raised on article 630 of schedule 2. Do members want to comment? If not, we will move on.

1128. Schedule 3 deals with amendments, fingerprints and DNA profiles. Article 53B(1) deals with persons convicted of an offence. The Children’s Law Centre, the Northern Ireland Commissioner for Children and Young People, Opportunity Youth, GeneWatch UK and NIACRO highlight concerns that the Bill treats cautions in the same way as a recordable offence and that all adults who are cautioned or convicted for a single minor offence and all young persons who are cautioned or convicted for more than one offence will have their records retained indefinitely. GeneWatch UK suggests that consideration be given to whether that is necessary or proportionate. The other organisations question whether the provisions run contrary to the purpose of a caution, which is to divert children away from the criminal justice system. In response, the Department states:

*“A caution is treated as being equivalent to a conviction for the purposes of the retention of DNA profiles and fingerprints because it involves acceptance of guilt. There is no logical basis for treating it otherwise for the purposes of the DNA and fingerprint databases, which are, as observed above, quite different from criminal records...”*

*At present, cautions are the only diversionary disposal treated as a conviction for the purposes of the retention framework, although consideration is being given to treating completion of a diversionary youth conference similarly.”*

1129. Do members have any comments?

1130. **Mr McCartney:** I have a general comment on cautions.

1131. **The Chairperson:** On other amendments, I refer members to annex A. It provides information on other proposed amendments relating to retention on award of a penalty notice, the inclusion of diversionary youth conferences within the definition of conviction for the purposes of retention, and a drafting

error in the Bill. Do officials want to outline the proposed amendments that relate to penalty notices, youth conferencing and the drafting error?

1132. **Mr Kerr:** Yes. Penalty notices already exist in retention legislation in Scotland and were introduced in England and Wales in the Protection of Freedoms Act 2012. We did not have them here at the time the Bill was originally drafted. However, the provisions have been commenced since, so in our view, they should be brought within the terms of the framework on the same basis as in the other jurisdictions. That involves retention for a two-year period.

1133. With regard to diversionary youth conferences, colleagues on the youth justice and probation side of the office have said that, as we are bringing cautions within the Bill and treating them as convictions, it would be inconsistent not to treat diversionary youth conferences in the same way. So, at their suggestion, we are bringing them in.

1134. The drafting error is precisely that: it was a slip of the keyboard, I suspect. It is a reference to PACE in England and Wales, when it should, in fact, be a reference to the Police and Criminal Evidence (Northern Ireland) Order 1989, because both of those feature in that part of the Protection of Freedoms Act 2012.

1135. While we are dealing with diversionary disposals — although it will not be a matter for the Bill, just for completeness — there are plans elsewhere in the office to introduce prosecutorial fines, probably in the faster, fairer justice Bill next year. If so, it is likely that a line will be included to bring those within the retention framework, again with some sort of fairly modest retention — probably the two years that are associated with them.

1136. **The Chairperson:** OK.

1137. **Mr McCartney:** I want to go back to penalty notices. When that came through in the Justice Act 2011, the way in which it was framed was that those notices would be given in such

circumstances so that a young person would not enter into the criminal justice system in any way. I cannot recall, when we went through that in the previous mandate, whether there was any suggestion that fingerprints and DNA would be taken at the issuing of one of those notices.

1138. **Mr Kerr:** If a young person has been arrested for a recordable offence, his or her fingerprints and DNA will have been taken. If a penalty notice is the disposal that is used, the two-year retention would accompany that. The taking power accompanies the arrest rather than the disposal.
1139. **Mr McCartney:** You say “arrest”. Again, the way in which that was explained to us was that if, for example, a young person is caught shoplifting, which I think was one of the examples, he or she is asked to report to the local station within 48 hours. There is no suggestion of arrest or is that seen as an arrest?
1140. **Mr Gary Dodds (Department of Justice):** There would be cases in which an individual is arrested because an officer feels that an arrest is appropriate. That person is brought back to the station. Through enquiries or whatever, the officer decides that the best diversion would be a penalty notice for the particular offence. However, by virtue of the fact that the individual was arrested, the police have the power to take DNA and fingerprints. That would not happen in every circumstance. A penalty notice for disorder (PND) could be issued without an arrest. It is only in cases in which an arrest has actually been effected that the power would kick in to take the biometrics. So it would happen only in those cases. Generally speaking, I think that PNDs would be issued without an arrest as such. I do not have figures for the number of cases in which arrests actually took place.
1141. **Mr McCartney:** Perhaps we could come back to that issue. Although I am not certain, my recollection is that there would be circumstances in which there would not be an arrest. The
- young person might be stopped in the street, accepts that what he or she did was wrong, be asked to come to the barracks within 48 hours and takes the penalty notice, so that there would be no arrest. If you are saying that, in those circumstances, there is no taking of DNA or fingerprinting, that is partly satisfying —
1142. **Mr Kerr:** I think that that is right. The taking power has to be triggered in the first instance, and that is on arrest.
1143. **The Chairperson:** When we get the exact drafting of the amendments, we will come back to penalty notices. Unless I have left anything out that members wanted to raise, that has given us a clear guide of the areas that we can narrow down for future discussion. I thank the officials very much for attending.



## 22 November 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Stewart Dickson  
 Mr Alex Easton  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley

1144. **The Chairperson:** We move to further consideration of matters relating to the Criminal Justice Bill. Members have a paper summarising the Committee's initial deliberations, on 8 November, on the sex offender and human trafficking provisions of the Bill.
1145. The Department will provide the draft wording of three amendments that it intends to bring forward in relation to the sex offender provisions. The Committee will consider those further when they are available. No other issues have been highlighted in regard to the sex offender provisions. Therefore, no further discussion will be scheduled on that part of the Bill prior to the formal clause-by-clause stage, when the Committee will be asked whether it agrees with each clause.
1146. We went through this in the previous mandate, and a lot of views were aired then. I know that my party aired views on it. I will repeat that this is something that we are not doing by choice. I do not think that a lot of people are doing it by choice, but it is to comply with the court ruling on it. I think that, since we opposed it in the previous mandate, a number of changes have come through that are to the benefit of the Bill and will strengthen it from our perspective. In that respect, it was worthwhile that we did not support it, but, nevertheless, we are where we are.
1147. We agreed that there were a number of issues to discuss in regard to the human trafficking provisions. They include the PSNI recommendation
- to use the term "human trafficking" consistently in the Bill, the possibility of including a provision to introduce a minimum term of imprisonment for human trafficking offences, whether human trafficking victims should automatically qualify for special measures that are available to witnesses, and the proposed approach to a national rapporteur. Those issues will be scheduled for detailed discussion at the extra meeting that will be held on Monday 3 December or Tuesday 4 December. We will need definitive views at that point, prior to the 6 December meeting.
1148. The Department has provided further information on three issues that officials had agreed to come back to the Committee on. That correspondence, which has been tabled today, will be included in the papers for the extra Bill meeting to provide members with an opportunity to consider the information.
1149. At our meeting on 8 November, we were to consider the table that was provided by the Department on its compliance with the European directive on human trafficking and to indicate any issues that we wished to discuss further. Members also agreed to consider the range of issues that were raised in the evidence received on the Bill that are included in the draft Bill that Lord Morrow has recently consulted on. However, the Department has indicated that it does not intend to include them in primary legislation, and we are asked to identify any that we wish to examine further.
1150. We have had a fair amount of evidence from groups about where they feel that the Bill could be strengthened. They have highlighted aspects of Lord Morrow's Bill that they feel that we should seek to include in the Bill. I am content that we collate all the views that people brought forward that highlight Lord Morrow's Bill and acknowledge

that the private Member's Bill coming forward will ultimately come to this Committee. We would consider it at that stage. I think that there is a fair amount of agreement on quite a large number of aspects of it. We can proceed to support it through that route. I am going to put that as the approach to deal with that element of evidence. We will deal with that, and we will note it. I think that, on its approach to considering that private Member's Bill, the Committee is agreed on 90% of it, but we will take our definitive view when that comes forward. We will support the changes that are coming from the Department in this Bill. We just need to be careful not to say that we have received evidence and that we are parking it without having any sort of sympathy towards it or expressing the view that we will positively take that forward in Lord Morrow's Bill when it comes to the Committee. Are members content to take that approach?

*Members indicated assent.*

1151. **The Chairperson:** There was also the proposal from Ian McCrea to include an amendment about firearms. I previously indicated that we would look at that issue when we have the conclusion of the consultation around the whole firearms issue and the fees. The Department's response opposes what the amendment seeks to achieve. Nevertheless, if members are content, we will park that proposal at this stage and come back to that when the consultation on the firearms issue is due to come to the Committee, which is around February or March. Are members content with that approach?

*Members indicated assent.*

1152. **The Chairperson:** An additional amendment has been proposed by the Department in relation to the registered intermediaries schemes. At its meeting on 11 October, the Committee considered a proposal by the Department to bring forward an amendment to the Criminal Justice Bill to make additional legislative provision in relation to the registered intermediaries scheme and agreed to

request the wording of the proposed amendment to allow full consideration of the matter. The Department has now provided the wording of the provision. It is at annex D of tab 3. If members are content with the proposed departmental amendment, we will note it.

*Members indicated assent.*

1153. **The Chairperson:** OK? That is noted.

1154. So, we will pencil in the rest of the issues that are outstanding for the additional meeting on either Monday 3 December or Tuesday 4 December 2012. At that point, we will need to have definitive views on those issues. We will undertake formal clause-by-clause scrutiny on 6 December, if members are content with that.

*Members indicated assent.*

1155. **The Chairperson:** Last week, I mentioned the proposed amendment to abolish the offence of scandalising the court. The Committee Clerk has taken forward a piece of work in respect of that, and the Clerk of Bills is present. The paper sets out how the draft amendment would look. There was the issue of whether it would be within the scope of the Bill for the Committee to do that. I invite the Clerk of Bills to speak to us on it.

1156. **The Clerk of Bills:** Thank you, Chair. The short amendment is very simple and straightforward. I hope that it would be fine. Committee members will, of course, remember that I briefed you on the scope of the Bill to the effect that it is a widely scoped Criminal Justice Bill. There is just one little thing to flag up. I did a bit of initial research, and it appears that the offence of scandalising the court lies somewhere between criminal law and administration of justice. So, although this is a widely scoped Bill in the field of criminal justice, I could not guarantee that the offence of scandalising the court is entirely a criminal justice matter. It derives from criminal contempt of court, but it does not involve a prosecutorial or police investigation or other machinery of justice that would be associated with criminal justice. So, I just want

- to exercise that wee word of caution. I think that it should be OK, but I am looking into that with regard to the scope of the Bill.
1157. It is a very simple amendment. It simply states that the common law offence is abolished. On the back of the page, for information, I have put Lord Pannick's amendment, which was to be moved in committee in the Lords. As you will recall, of course, that one was withdrawn pending a consultation. You can see that the format is very similar. You will also note that it was being moved in the context of a Crime and Courts Bill. That is the key distinguishing feature. That Bill is dealing with the administration of justice. That is all, Chair, unless anyone has any questions.
1158. **The Chairperson:** OK. Thank you.
1159. **Mr A Maginness:** I have one small point. You say "scandalising the court", as opposed to "scandalising the judiciary". Why are you making that distinction?
1160. **The Clerk of Bills:** I understand that that is the correct term. I have just done a wee bit of initial research. This was a Back Bench —
1161. **Mr A Maginness:** Well, the Lords have got it wrong. I am sure that Lord Lester is inexperienced in these matters. *[Laughter.]*
1162. **The Clerk of Bills:** I am at a loss for words. I took advice. That appears to be what is recommended in our jurisdiction, let us say.
1163. **The Chairperson:** OK, members. As the Minister indicated, as a rule of thumb, we prefer not to have legislative consent motions if we are able to put it through our own legislation. In this circumstance, we can. Therefore, it was not necessary to have a legislative consent motion because we have a vehicle to do it, and that avoids the Department's having to go through different protocols. Unless members tell me that we absolutely do not want to do it, I propose that this is a Committee amendment that we would table at Consideration Stage.
1164. **Mr A Maginness:** Agreed.
1165. **Mr McCartney:** Will evidence be provided?
1166. **The Chairperson:** If members want, we can provide the responses to the consultation that took place in England and Wales in respect of all this, and on which our Attorney General made a submission. You are probably not surprised to hear that. *[Laughter.]* That would provide members with some background on how it was arrived at there.
1167. **Mr McCartney:** When he appears before the Committee, would that be an appropriate occasion to bring it up and to ask him for his expressed view?
1168. **The Chairperson:** If you feel that it would be helpful. I do not think that my view will agree with his view, but members are —
1169. **Mr McCartney:** It would help with scrutiny. An amendment is put in front of us, and we are asked to say yes or no without hearing about it. With the other legislation, at least some sort of commentary comes with it. It might be best to give him that opportunity.
1170. **Mr Dickson:** I have a brief question; it has maybe been answered. The proposed amendment in the House of Lords includes Northern Ireland in its sentence. Will that be removed?
1171. **The Chairperson:** My understanding is that that was put in and the letter was then sent to our Minister. Therefore, I anticipate that Northern Ireland will be withdrawn from it. They needed a legislative consent motion to put it in. They obviously could not do that, otherwise we would not need to.
1172. If members are content, we will supply the consultation exercise that took place in England and Wales. At this stage, are members minded to proceed with tabling the amendment?
- Members indicated assent.*
1173. **The Chairperson:** If we need more advice on that, we can get it from other stakeholders and, if necessary, consider it as an issue at our additional meeting. Thank you, members.





## 4 December 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Stewart Dickson  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr Alban Maginness  
 Ms Rosaleen McCorley

1174. **The Chairperson:** We had meetings on 8, 15 and 22 November, at which members indicated a range of areas for further consideration and deliberation in relation to the Criminal Justice Bill, and they were all pencilled in to be discussed at this afternoon's meeting. Following today's further discussion, the formal clause-by-clause consideration of the Bill is scheduled to take place at the meeting on Thursday. That will allow the Committee report on the Bill to be drafted and approved by the Committee at our meeting on 14 December.

1175. First, we will go through the sex offender provisions. Clause 3 covers offences committed in a European Economic Area (EEA) state other than the United Kingdom. The Committee agreed to consider the wording of a draft amendment that the Department intends to make to clause 3 in relation to the provision that places a statutory notification requirement on offenders with convictions from another European Economic Area state who come to Northern Ireland for a period of more than seven days. The limitation to EEA states was included in the provision on the advice of the Attorney General. The Executive, however, are not supporting clause 3 as drafted. The Department discussed the Executive's concerns with the Attorney General and believes that it has come up with an approach that should address the concerns of the Attorney General and the Executive. A copy of the relevant extract from the Department's briefing paper and the

wording of the draft amendment are included in members' meeting folders.

1176. Members, I seek your views on whether you are content with the approach that is now being proposed by the Department, which provides for a statutory notification period for offenders in Northern Ireland with convictions from countries outside the UK with a number of safeguards built in, and the proposed amendment to clause 3.

1177. The Committee had agreed to consider the wording of this draft amendment that the Department intends to make to clause 3 to address a drafting error in the Bill that was highlighted by the Public Prosecution Service (PPS). That error relates to inserting a new section 96A into Part 2 of the Sexual Offences Act 2003 relating to offences committed in an EEA state other than the UK. The PPS has indicated that section 96A already exists in the Sexual Offences Act 2003, although it applies only to Scotland, referring to powers of entry and examination of home address, which was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006. The Department has confirmed that this drafting error has not yet been corrected in the amendment that has been provided to the Committee. It is a matter of changing the number of the section from 96A, and it will be corrected. Members should note the intention to correct the drafting error.

1178. Are members content with those two areas that I have touched on?

*Members indicated assent.*

1179. **The Chairperson:** The Committee agreed to consider the wording of an additional sex offender notification provision that the Department intends to introduce at Consideration Stage. The amendment is to address a gap in current legislation concerning details and information to be provided to the police by offenders who

travel within the UK. The amendment will mean that an offender must notify the police if they intend to be away from their home address for longer than three days and provide relevant details. A copy of the relevant extract from the Department's briefing paper and the wording of the draft amendment are included in members' meeting folders.

1180. Are members content with the proposal for the additional provision?

*Members indicated assent.*

1181. **The Chairperson:** Next are the human trafficking provisions, starting with the issue of language and terminology. The Committee agreed to consider the PSNI recommendation that there is consistency in the Bill in referring to "human trafficking" rather than, at times, "trafficking people" when further information was provided by the Department on this issue. A copy of the evidence from the police, the Department's initial response and further information has been provided in members' meeting folders.

1182. So, members, we have further information that the Department has provided. Unless members have any proposal on actioning any of those issues or making any changes, we can agree things as they stand. Are members content?

*Members indicated assent.*

1183. **The Chairperson:** Next on human trafficking are convictions, disposals and sentencing. The Department has indicated that it is considering the implications of making offences triable on indictment only — in other words, only in the Crown Court — to address the concerns raised by the Committee. Work on this may not be completed before the end of the Committee Stage of the Bill. If the Minister decides that he wishes to make such an amendment, it is likely to be tabled at Consideration Stage. The Committee also indicated that it wished to discuss further the possibility of having a provision to introduce a minimum term of imprisonment for human trafficking

offences. The relevant extract from the Department's briefing paper is in the meeting folder.

1184. If members want an amendment to make the offences triable on indictment only, we will need to agree to that and then ask for a proposed amendment to be drafted.

1185. **Mr A Maginness:** Chair, could you remind the Committee why we were so minded to have those offences tried in the Crown Court only?

1186. **The Chairperson:** The Minister has indicated that he would not support that approach. Christine, can you give us a bit of history?

1187. **The Committee Clerk:** Yes. Members raised issues about the provision that the cases could be tried either under summary or in the Crown Court, and there were issues with the sentence of six months. Some members mooted the suggestion that a minimum sentence could perhaps be put into the legislation. The Minister looked at the issues that were discussed in Committee and came back with a response, which is stated in the paper that members have:

*"The Minister agrees fully with the strongly held view that Northern Ireland should be seen as a hostile place for traffickers and notes that sentencing is one of the tools".*

1188. That was the point that members made, and they were concerned that there was a possibility of people being found guilty of human trafficking offences and perhaps getting a fine or a minimum sentence. That concern led to the suggestion of possibly having a minimum level of sentence. The Minister came back to say that he had:

*"asked officials to consider the implications of making such offences triable on indictment only (in other words only in the Crown Court)."*

1189. At the last evidence session, the officials indicated that the Minister had asked them to look at that but that it was unlikely that they would be able to come back before the end of the

- Committee Stage to confirm whether the Minister would take it forward.
1190. So, the Committee has to try to decide today whether it thinks, given its concerns about possible levels of sentencing, that that is a possible solution that the Committee wants to see. You could indicate that you would support that approach, and if the Minister comes back to say that he does not intend to table that amendment, the Committee could table it. You could adopt that approach if you wish. Otherwise, you can decide to note that the Minister is looking at the issue but not form any view on it, in which case, if he does not table the amendment, nothing in the Committee report will indicate that you intend to do that. It is really about whether the Committee wants provision to make offences triable on indictment only put into legislation, and, if so, you could indicate that that is your position. If the Minister tables the amendment, the Committee will, obviously, support that. If the Minister indicates after Committee Stage that he does not intend to table that amendment, the indication would be that the Committee would table the amendment itself.
1191. **Mr A Maginness:** Chair, I think that we should wait until the Minister comes back. If he and the officials complete their work, we can then consider that because we could introduce an amendment at any stage, could we not?
1192. **The Committee Clerk:** You could. The issue is about what you want to reflect in the Committee report, which will have to be signed off next week. It is really about whether, as a Committee, you think that that is the position that you would like to see, in which case we can indicate that you intend to wait. However, the issue is that if you want to see that and the Minister comes back and says that he will not do it, does the Committee intend to do that itself? It is about what position you want to take so that we are clear about what we need to put into the report for you.
1193. **Mr A Maginness:** I would have thought that if there was an option to have a summary trial or a Crown Court trial, it would be up to the PPS to determine that issue, and the PPS would say that it is a serious offence. Human trafficking would almost always be regarded as a serious offence, and it would be up to the PPS to determine whether it should be tried at Magistrates' Court level or, alternatively, at Crown Court level. I would be content with that, but I would have thought that if the Minister comes back and says that he will rearrange things and treat all these offences as triable at Crown Court level, that would have a much greater effect on authority.
1194. **The Chairperson:** I suppose that it is about whether we would want to put it into law that it is Crown Court only. The question is this: is that necessary in curtailing the PPS?
1195. **Mr A Maginness:** I do not think that it is necessary. The PPS judges what is the correct forum to put these offences into.
1196. **Ms McCorley:** Is there an example of a different kind of offence that might enlighten us, where it might be the case that it would always be viewed as serious and, therefore, always indictable?
1197. **The Chairperson:** Yes, is there any other area where the trial for a criminal act that has been committed is in the Crown Court only?
1198. **The Committee Clerk:** When the Committee was discussing it, Mr Dickson raised the issue around the six months and the differences. At that stage, the Committee was veering more towards whether there should be a minimum sentence, but I do not think that the response from officials was necessarily that they thought that the Minister would want to go down that road. Maybe that is why they are looking at this other mechanism. At that stage, the Committee raised some views about whether the way to do it was to look at a minimum sentence, but, obviously, that has implications as well.
1199. **The Chairperson:** The problem is that there have not been that many

convictions and people taken through the courts, so we do not know whether it would be necessary to put forward that type of approach that it would be only an indictable trial. I am happy for us to have it recorded in the report that this is an area of concern for the Committee, and it is something that we will come back to if we do not believe that it is being dealt with properly in respect of the seriousness that should be attributable to this type of offence. That is something that we can review. There is another justice Bill coming forward, and there is always an opportunity for us to bring forward an amendment at some point if we feel that that is necessary.

1200. **Mr A Maginness:** I could live with that, Chair.
1201. **The Chairperson:** If members are happy, we will make some commentary around that in the report. We will review it and may come back to it to take the approach to make it indictable, but, at this stage, we will reserve our position on it.
1202. **The Committee Clerk:** We can also indicate in the report that the Committee will consider any further information provided when the Minister comes to us before Consideration Stage.
1203. **The Chairperson:** OK.
1204. We will move on to protection, assistance and support for victims. Members indicated that they wished to discuss further the issue of whether human trafficking victims should automatically qualify for special measures available to witnesses. A copy of the evidence received on this matter and the Department's response is in the meeting folder. This issue is covered in clause 12 of Lord Morrow's draft private Member's Bill on human trafficking. The Committee may wish to indicate that, as agreed at our meeting on 22 November in relation to other issues included in Lord Morrow's Bill, we will consider this issue further in that context. If members are content, we will take that approach.

*Members indicated assent.*

1205. **The Chairperson:** In relation to trafficking children, the Department agreed to update the Committee on the action being taken by the Department of Health, Social Services and Public Safety with regard to child victims of human trafficking and to provide details of the work carried out in relation to awareness raising by the PSNI and Barnardo's. A copy of the further information provided by the Department is in the meeting folder. Do members have any further comments in addition to the information that has been provided by the Department? Otherwise, we will note that. Are members content?

*Members indicated assent.*

1206. **The Chairperson:** OK. Members indicated that they wished to discuss further the proposed approach to a national rapporteur. We have a copy of the evidence that was received on the matter, and the Department's response is available for members' information in the meeting folder. Members may wish to take action in the context of the Bill. We will note it as drafted, unless members —
1207. **Ms McCorley:** I feel fairly strongly that there is a requirement for a national rapporteur or some method of independence from government. The Minister's view is that the inter-ministerial group covers that function. There has been commentary from other sources that questions the independence.
1208. **The Chairperson:** Christine, if we wanted to do something on that, how would we take it forward?
1209. **The Committee Clerk:** We could highlight in the report that that is a view, unless you particularly want to put in legislation that there is a requirement for one. We can highlight that the view is that there should be an independent rapporteur and that members raised that as an issue. We can take it forward with the Department on that basis in the meantime, unless you particularly want to make a proposal that it is put in

- the legislation that there should be an independent rapporteur.
1210. **Ms McCorley:** I would be happy to listen to other members' views. I am conscious that there have been so few cases here so far. I am guided by the commentary, but I am happy to —
1211. **The Chairperson:** I am content for us to put in the report that it is an area that the Committee would have a concern around, and we could ask the Department what it is doing to address that. I am not sure that, at this point, from our perspective, we want to legislate on it, but I am certainly content for us to put in the report the concerns that you have raised and a request for the Department to address those.
1212. **Mr McCartney:** At Further Consideration Stage, you could table your own amendment if required.
1213. **The Chairperson:** Yes.
1214. **The Committee Clerk:** There will also be opportunities if the private Member's Bill on human trafficking comes forward, if you are still having discussions with the Department on that. That Bill might provide an opportunity as well because, obviously, it is going to cover those sorts of areas.
1215. **The Chairperson:** We move to the DNA/fingerprint retention provisions. In the meeting folder, we have a table that sets out evidence that was received and the Department's response in relation to DNA/fingerprint retention provisions. There is also a copy of the Hansard report of the Committee's deliberations on 15 November, and a briefing paper from the Department that provides further commentary on the retention framework relating to juveniles, prescribed circumstances, the biometric commissioner, the retention of material until the conclusion of an investigation and three other proposed amendments. In addition, there is the wording of the draft new clauses and amendments that the Minister proposes to move at Consideration Stage.
1216. First, we will deal with the provisions as they relate to children and juveniles. Members indicated that they wished to discuss that area. The Department's position is that, in the cases of juveniles who have been convicted of serious or repeat offending, it considers that indefinite retention is appropriate. It also points out that the Bill provides that young people who are convicted of a first minor offence will have their data retained for an individually tailored period of between five and 10 years only. In cases in which there has been no conviction, the Department indicates that research does not support a shorter DNA retention period for juveniles than for adults, given that the future offending risks for juveniles are higher than they are for adults. Relevant information can be found in the papers.
1217. Members, what are your views on this? I know that, from the DUP's perspective, we are content with what the Department is proposing, and that will be our approach on Thursday. Do other members want to indicate?
1218. **Mr McCartney:** We have previously highlighted issues around the caution, obviously the penalty notices and, in the wider context, the presumption of innocence. During the clause-by-clause scrutiny, we will bring that to that as well.
1219. **The Chairperson:** OK. So, on Thursday, when we come to the formal clause-by-clause scrutiny, will it be a proposed amendment or do you plan to abstain from that and then at Further Consideration Stage —
1220. **Mr McCartney:** The possibility is that we will abstain on Thursday and seek appropriate amendments at Further Consideration Stage.
1221. **The Chairperson:** Have any other members anything to say on this?
1222. **Mr A Maginness:** The caution is the difficult one. The value of the caution is that it is not really a conviction, but it is really treated as a conviction.
1223. **The Chairperson:** For the purposes of retaining DNA.

1224. **Mr A Maginness:** Yes, that is the thing. Do you devalue a caution by doing that? Do you affect it in some way? Is there a negative impact on the use of a caution? That is the problem as I see it.
1225. **Mr Elliott:** Why, Alban? Sorry, through the Chair, I am wondering what the rationale is for your thinking?
1226. **Mr A Maginness:** To my mind, a caution is not a conviction, although when you are cautioned and you accept a caution, you have to say that you are guilty. If you get a caution for careless driving, you have to say that you were careless, but it is not really a conviction in the real sense. However, when you caution a young person in particular, it is to try to redirect them and keep them away from reoffending. In the situation where retention is then mandatory as a result of a caution, which it would be under this, it seems to me in some way to affect the purpose of a caution. If it damages the use of cautions, then —
1227. **Mr Elliott:** I cannot see how it would.
1228. **Mr A Maginness:** That is the point. The argument is this: does it, in any way? I think that it does, but I cannot articulate that properly.
1229. **Mr Easton:** I cannot quite see where you are coming from. It would not be held against you if you were arrested later. If you did commit an offence, it would just signify that you did it, but it cannot be used against you. So I do not see how —
1230. **Mr A Maginness:** No, it cannot, but there is a further implication of a criminal offence. That is just my feeling about it, and I am uncomfortable with that.
1231. **The Chairperson:** I can appreciate that. I am satisfied that because it is never disclosed and it cannot be equated with a criminal record and it is not on the same standard, then, on the ideal of prevention and detection of crime, on balance, we are content with —
1232. **Mr A Maginness:** There is no doubt that there is a public good. If you are preventing crime or if you are detecting crime in the future, that is a public good. You have retained those fingerprints or DNA or whatever, and that helps to identify the perpetrator. I am not against that.
1233. **Mr Elliott:** Chairman, I see where Alban is coming from, but I do not necessarily agree with his point. I can understand his logic in thinking that, but I just do not agree with it.
1234. **Mr A Maginness:** You might be right. I do not have a fixed view on it.
1235. **The Chairperson:** It is where some people seem to equate the retention of DNA as being the same as getting a conviction, and then that it is part of a criminal record. I do not take that view at all on the retention of DNA, and that is how I have been able to rationalise my approach to it.
1236. **Mr A Maginness:** Well, you could argue that everyone's DNA should be retained. I think that the public would react in a fairly hostile way to that.
1237. **The Chairperson:** Everyone's DNA being retained? Even I would probably not like that. We know where we are for —
1238. **Mr A Maginness:** As far as the SDLP is concerned, I will join with the Sinn Féin position on that when we come to Thursday's session.
1239. **The Chairperson:** OK. With regard to the minimum age of responsibility, members had indicated that they wished to discuss the application of the provisions within the context of the current age of criminal responsibility of 10. Again, the relevant pages are 14 to 16 of the table at tab 8 and pages 3 and 4 of the Hansard report at tab 9. Have members any issues that they wish to raise? Again, from the DUP's perspective, whatever the age of criminal responsibility is, that is the age to which we think it should be applicable. If that was 12, then it should be 12. If 14, it should be 14. That just deals with the practical reality that it is currently 10. Do members want to raise anything else?

1240. **Mr McCartney:** We will decide on Thursday.
1241. **The Chairperson:** OK. With regard to schedule 2, article 63B, “Destruction of fingerprints and DNA profiles: basic rule”, members indicated that they wished to discuss article 63B(2), by which material can be retained in circumstances when an arrest is unlawful or the taking of material is deemed to be unlawful. The relevant information can be found at page 19 of the table at tab 8 and page 4 of the Hansard report at tab 9. Do members have anything that they want to propose at this stage in respect of that? If not, I assume that, on Thursday, people will vote accordingly on what is before us.
1242. Schedule 2, article 63C, deals with the retention of article 63B material pending investigation or proceedings. The Committee agreed to consider the wording of a draft amendment that the Department has agreed to make to article 63C to clarify the provision by linking retention to the perceived utility of the material, rather than to the conclusion of the investigation. The wording of the draft amendment can be found at tab 11. The relevant information is found on page 19 of the table at tab 8, pages 4 and 5 of the Hansard report at tab 9 and the briefing paper from the Department at tab 10. Again, do members wish to express their views on that proposed amendment? If they want to propose anything contrary to it, we will deal with it formally on Thursday.
1243. Schedule 2, article 63D deals with the retention of article 63B material from persons arrested for or charged with, but not convicted of, a qualifying offence. Members indicated that they wished to discuss articles 63D as it applies to a person who is arrested for or charged with a qualifying offence, but is not convicted of that offence, and issues of proportionality and the presumption of innocence. The relevant information is found at pages 20 to 30 of the table at tab 8 and page 5 of the Hansard report at tab 9. Unless members want to propose anything that is contrary to what is before us from the Department at today’s meeting, we will decide on it formally on Thursday.
1244. **Mr McCartney:** Again, it is around the presumption of innocence.
1245. **The Chairperson:** The Committee agreed to consider the wording of a draft amendment the Department has agreed to make to article 63D to set out on the face of the Bill the prescribed circumstances, and in response to issues that were raised by the Assembly Examiner of Statutory Rules in his report on the delegated powers that are contained in the Bill, which the Committee referred to the Department for consideration and comments in written evidence. The Department intends to move an amendment to set out the prescribed circumstances that relate to the circumstances in which an individual has been arrested in connection with a serious, violent or sexual offence where there is insufficient evidence to bring charges. The wording of that draft amendment can be found at tab 11. Relevant information is on pages 20-30 of the table at tab 8 and pages 5 and 6 of the Hansard report at tab 9, and also in the briefing paper from the Department at tab 10. It is whether members are content with the proposed amendment that is provided by the Department that will set out the prescribed circumstances in the Bill.

*Members indicated assent.*

1246. **The Chairperson:** Members indicated that they wished to discuss the issue of a biometric commissioner. The Department has explored with the police and the courts the possibility of the proposed role of the biometric commissioner being undertaken by the courts. Without a clear idea of the likely volume and the associated resource implications, the courts are reluctant to take on that role. The Department has, therefore, concluded that a biometric commissioner is the preferred option for the time being and intends to proceed on that basis. However, it has given an undertaking to keep the matter under

review. Are members content with what the Department has indicated?

*Members indicated assent.*

1247. **The Chairperson:** In schedule 2, article 63E concerns the retention of article 63B material for persons arrested for or charged with a minor offence, and article 63F concerns the retention of article 63B material for persons convicted of a recordable offence. Members indicated that they wished to discuss the issue of necessity, proportionality and the scope of recordable offences in relation to the provisions to retain material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. The relevant information is on pages 30-40 of the table at tab 8 and pages 6 and 7 of the Hansard report at tab 9. Do members wish to propose anything at today's meeting in respect of this? If not, we will formally decide on Thursday, based on what has been proposed. OK?

*Members indicated assent.*

1248. **The Chairperson:** In schedule 2, article 63H concerns the retention of article 63B material exception for persons under 18 convicted of their first minor offence. Members indicated that they wished to discuss the issue of the retention of children and young people's fingerprints/DNA in relation to cautions. That was touched on earlier. We can note that in anticipation of you, Raymond, making some comment around that on Thursday.

1249. **Mr McCartney:** Yes.

1250. **The Chairperson:** In schedule 3, article 53B(1) concerns persons convicted of an offence. Members indicated that they wished to discuss the issue that a caution is treated as being equivalent to a conviction for the purposes of the retention framework. The relevant information is on pages 44-48 of the table at tab 8 and page 9 of the Hansard report at tab 9. I think that that is the same issue from earlier.

1251. **Mr McCartney:** Yes.

1252. **The Chairperson:** There is a proposed amendment to permit limited retention on award of a penalty notice. The Committee agreed to consider the wording of a draft amendment that the Department proposes to introduce to make provision permitting limited retention — two years — in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. The wording of the draft amendment can be found at tab 11; relevant information can be found at pages 9 and 10 of the Hansard report at tab 9 and the briefing paper at tab 10. It is whether members are content with the proposal from the Department to provide for limited retention in cases where a penalty notice has been issued, and with the wording of the amendment. Raymond, you touched on that penalty notice earlier.

1253. **Mr McCartney:** It is the same principle as the caution. It is interesting that the period is less, so they are even making a distinction between a caution and a fixed penalty. It is something that we will come to on Thursday.

1254. **Mr A Maginness:** The question is: when would that ever arise? I suppose that we are extending penalty notices. A penalty notice could be for disorderly behaviour and that sort of thing.

1255. **Mr McCartney:** A first offence for someone under 18, such as shoplifting. It was said last time that people may not necessarily be fingerprinted or have their DNA taken.

1256. **Mr A Maginness:** That is the point that I am making. Normally, you would not fingerprint or take the DNA of people with a penalty notice.

1257. **The Chairperson:** A penalty notice is to avoid criminalisation, and the argument, from my perspective, will be —

1258. **Mr A Maginness:** Are you devaluing that?

1259. **The Chairperson:** Yes, but I do not regard the retention of DNA as a criminal to be equivalent to it. Therefore, we are relaxed about that.



1260. The Committee agreed to consider the wording of a draft amendment that the Department proposes to introduce to bring completion of a diversionary youth conference into the framework on the same basis as a caution. The Department indicated that both diversionary youth conferences and cautions require acceptance of guilt on the part of the offender, and so are treated as convictions for the purposes of the retention framework. The wording of the draft amendment can be found at tab 11, and the relevant information is on pages 9 and 10 of the Hansard report at tab 9 and in the briefing paper at tab 10. It is up to members to indicate whether they are content with the proposal that the Department is to bring completion of a diversionary youth conference into the retention framework on the same basis as a caution, and with the wording of the amendment that is before us. Certainly, from our perspective, we are content. Is that something that —
1261. **Mr McCartney:** We will come back to you.
1262. **The Chairperson:** The Committee agreed to consider the wording of a draft amendment that the Department intends to introduce to correct a drafting error in paragraph 6 of schedule 3 to change “18(8)(b)” to “18(8)(c)”. The wording of that amendment is in the papers, and members should note that.
1263. The Committee agreed to give further consideration to a draft amendment to abolish the offence of scandalising the court following circulation of information relating to a consultation undertaken in England and Wales on that issue. The Committee also agreed to write to the Attorney General seeking his views on the proposal. Relevant papers, including the consultation information, the wording of the draft amendment and the Hansard report of the Bill session, when the Bill Clerk briefed the Committee on the proposed amendment, is at tab 12 of the meeting folder. The response of the Attorney General will be circulated on receipt.
1264. The response from the Attorney General in relation to the proposed amendment has been tabled for members. He is of the view that public confidence in the administration of justice, for example in the impartiality of judges, is far too important to be left to the personal inclination of an individual judge to seek a private law remedy. He believes that the law of scandalising contempt in its present form is neither particularly accessible nor widely understood and indicates that the statutory provision in that area would remove any current uncertainties and promote awareness of rights and responsibilities in relation to criticism of judges. He suggests that the Criminal Justice Bill may provide an opportunity to recast scandalising contempt in a statutory form. That is available for members’ consideration.
1265. **Mr McCartney:** We need to await the outcome of whether that is competent for this Bill or whether it goes into the Faster, Fairer Justice Bill before you can make up your mind.
1266. **The Chairperson:** Are members content that we go forward with the amendment that was drafted, and the Speaker will then rule on whether it is admissible? That can allow us to proceed, or not.
1267. **Mr McCartney:** Yes.
1268. **The Chairperson:** That concludes the deliberations on the clauses and schedules of the Criminal Justice Bill, unless members want to discuss any other issues that are relevant to it. Stewart got in in time for his tick.
1269. **Mr McCartney:** He was standing outside the door.
1270. **Mr Dickson:** I was in the other place.
1271. **The Chairperson:** Quite right. As the Speaker says, that should be the primary objective of Members and should take precedence over Committees. The formal clause-by-clause consideration will begin at the Committee on Thursday, when we will go through each clause and schedule to determine whether they will stand part.



## 6 December 2012

### Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)  
 Mr Raymond McCartney (Deputy Chairperson)  
 Mr Alex Easton  
 Mr Tom Elliott  
 Mr William Humphrey  
 Mr Seán Lynch  
 Mr Alban Maginness  
 Ms Rosaleen McCorley  
 Mr Patsy McGlone

### Witnesses:

Mr Tony Kavanagh *Department of Justice*

1272. **The Chairperson:** We will now have the formal clause-by-clause consideration of the Criminal Justice Bill. A paper setting out the final position in relation to the deliberations that have taken place on the Bill has been circulated to members. For ease of reference, the amendments to the Bill have been considered by the Committee and are attached to this briefing paper. This morning, the Department has provided details of an amendment that it intends to bring forward to rectify a possible incompatibility with the European Convention on Human Rights (ECHR) concerning licence arrangements relating to the release of young offenders who are convicted of certain serious crimes. That letter is item 2 of your tabled pack. Given that we have only received it, the Committee will note the intended amendment and not form any view if members feel that we are not able to form a view. We will look at that amendment shortly.
1273. Do members wish to look at the amendment rather than just note it? We have officials with us who can talk to us about it. If members feel that we can get an agreed position now, we could go ahead and do that. Or do members feel that, procedurally, because of the late notice, they prefer to note it?
1274. **Mr Elliott:** It might be better to at least hear from the officials.
1275. **The Chairperson:** Let us have the officials forward quickly then, please, and we will run through it. It is very late for us to be getting it. We are meant to be agreeing things by this point
1276. **Mr Tony Kavanagh (Department of Justice):** Thank you, Chair, and I apologise for the late submission of the amendment. I will explain the circumstances as to why it worked out like that. I am Tony Kavanagh from the youth justice unit in the Department. I have been responsible for taking this issue forward and drafting the instructions for counsel. Briefly, the background of this is that article 45(2) detention orders are used for particularly serious crimes that children commit. They are rarely used. We have had about five in the past 10 or 12 years. We have not had one in the past four years, but they do come around from time to time. We have two young people serving detention orders at the moment.
1277. The way the legislation works is that, at any point during the period of detention, the Minister of Justice can release the individual on licence and, if necessary, recall them from licence if they break the conditions. One of the young people has taken a judicial review in relation to how we operate that particular order. Although that case has not been completed yet — the hearing is on 17 December — counsel's advice to us is that there is a serious risk that the current arrangements are not compatible, in that they provide a Minister rather than an independent judicial body with powers to determine release and recall. That makes it incompatible in general with aspects of the ECHR, but also inconsistent with the operation of other orders that are

similar, such as the public protection orders and even life sentences.

1278. What we have done to correct that in the amendment is to remove the Minister from the decision-making process and tie it in to the standard way of dealing with this, through the Parole Commissioners. What will happen now is that if we have any more of those orders, the judge will set a period of custody that the person must serve before being considered for release on licence. At that point, that case must be referred to the Parole Commissioners for them to consider whether the individual should be released on licence. If they are released on licence, they are also responsible for the recall. Previously, it was down to officials in the Department and the Minister; now, it will be a matter for the judge setting the effective tariff on these orders, and the Parole Commissioners will decide on the same basis that they decide to release or recall adult prisoners who are subject to public protection orders. The key consideration in this is the protection of the public. That is what it is there for. It is because we have these two cases, and we need to address the law because it is at serious risk of an incompatibility case.

1279. **The Chairperson:** Are members content with the amendment that is before the Committee?

*Members indicated assent.*

1280. **The Chairperson:** Members, let us go through the clauses. Feel free to stop me at any point if you want to make a comment, not agree to things, or abstain. First, we will deal with the sex offender provisions.

**Clause 1 (Review of indefinite notification requirements)**

1281. **The Chairperson:** No issues were highlighted in relation to this clause. Keep the briefing paper beside you. The first couple of pages have a quick description of each of the clauses. Clause 1 is around the review of indefinite notification requirements. No issues were highlighted.

*Question, That the Committee is content with the clause, put and agreed to.*

*Clause 1 agreed to.*

*Clause 2 agreed to.*

**Clause 3 (Offences committed in an EEA State other than the United Kingdom)**

1282. **The Chairperson:** The Committee has agreed that clause 3 should be amended as proposed by the Department, and the amendments are at tab 1 of the briefing paper. Are members still content with how the Bill is being amended by the Department?

*Members indicated assent.*

1283. **The Chairperson:** OK, just to keep the procedure right, first of all, we need to agree the amendments as proposed, and then the clauses. So, are members content with the amendments proposed by the Department?

*Members indicated assent.*

*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

*Clause 3 agreed to.*

*Clause 4 agreed to.*

**Schedule 1 (Schedule 3A to the Sexual Offences Act 2003, as inserted)**

1284. **The Chairperson:** No issues have been highlighted on schedule 1. Is the Committee content with schedule 1 as drafted?

1285. **Mr McCartney:** What page are we on now?

1286. **The Chairperson:** This is schedule 3A to the Sexual Offences Act 2003.

1287. **The Committee Clerk:** Page 9.

1288. **Mr McCartney:** On page 7 of the Bill is clause 7, which deals with the retention of fingerprints and DNA profiles.

1289. **The Committee Clerk:** We have not dealt with that yet. The Chairman has put the questions on the sex offenders clauses and then the schedule that is

related to the sex offenders clauses. We will return to that.

1290. **Mr McCartney:** That is OK.

*Question, That the Committee is content with the schedule, put and agreed to.*

*Schedule 1 agreed to.*

**New Clause**

1291. **The Chairperson:** Human trafficking, then. Let us go to those clauses. There are two of them, and then we will go to the retention of fingerprints. There is an additional amendment that the Department has brought forward with regard to sex offender notification. I will let Christine talk us through that.

1292. **The Committee Clerk:** Members, we have now been through the clauses that relate to the sex offender notification requirements and the schedule related to those. There is also a new proposed additional amendment from the Department in relation to sex offender notification. That is the clause that we are going to consider now, because, depending how you agree these clauses, there may be knock-on amendments to later clauses. Members should turn to tab 5 in their folders. There you see the wording of the additional sex offender notification provision. It is intended to address the gap in current legislation concerning details and information to be provided to the PSNI by offenders who travel within the UK. The Department intends to introduce this amendment at Consideration Stage, and members indicated, at the meeting on 4 December, that they are content with the wording of the amendment. The Chairman will now put the question on that additional provision.

1293. **The Chairperson:** We agreed to it on 4 December.

*Question, That the Committee is content with the new clause, put and agreed to.*

**New clause agreed to.**

**Clause 5 (Trafficking people for sexual exploitation)**

1294. **The Chairperson:** Though the Committee is content to support the introduction of the new human trafficking offences covered in clauses 5 and 6, concern has been expressed that a summary conviction in relation to those offences could attract a sentence of less than six months or a fine. In response, the Minister is considering the implications of making offences triable on indictment only. However, that work has not yet been completed. The report on the Bill will reflect the Committee's concerns and its agreement to review the position. Therefore, members, there is no amendment before us, so we are considering clauses 5 and 6 as they stand.

*Question, That the Committee is content with the clause, put and agreed to.*

*Clause 5 agreed to.*

**Clause 6 agreed to.**

**Schedule 2 (Articles 63B to 63O of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted)**

1295. **The Chairperson:** Clause 7 gives effect to schedules 2 and 3 to the Bill, and inserts the new retention framework for fingerprints and DNA profiles in the Police and Criminal Evidence (Northern Ireland) Order 1989 and makes consequential amendments. Some members have indicated that they have concerns in relation to the new retention framework. As members' view of clause 7 may depend on the decisions reached in relation to schedules 2 and 3, I will put the questions regarding schedules 2 and 3 before dealing with clause 7.

1296. The Department has informed the Committee of three areas in relation to schedule 2 where it intends to bring forward amendments at Consideration Stage. The first amendment relates to article 63C of the 1989 Order, to clarify the provision by linking retention to the perceived utility of the material rather than to the conclusion of the investigation. The amendment is at tab 2 of the briefing paper. Is the Committee content with the proposed departmental amendment relating to article 63C?

- Members indicated assent.
1297. **The Chairperson:** The next three amendments relate to article 63D of the 1989 Order and set out on the face of the Bill the prescribed circumstances. Those amendments are also at tab 2 in the briefing paper. Do members want to comment on any aspects of that?
1298. **Mr McCartney:** I suppose that, at this stage, in a broad sense, I want to deal with the DNA and fingerprints aspects of it. Throughout the process, we have raised the point that the legislation is obviously the result of a European Court of Human Rights decision in the Marper case. That case was basically about the blanket nature of the retention, particularly for people who are not convicted. We have some concerns that this may not be compliant with the standard required by the court, particularly around the presumption of innocence. We have severe reservations. For today's purposes, we are just notifying you and the Committee that it will be our intention to table a number of amendments at Further Consideration Stage to outline that concern.
1299. **Mr A Maginness:** I share those concerns with my colleague here. We will obviously consider any amendments that are tabled, with a view to supporting them.
1300. **The Chairperson:** Is that commentary around all this aspect just to do with the DNA? Are you going to abstain on pretty much all the areas to do with this element of the Bill?
1301. **Mr McCartney:** There are areas, obviously, where rules around destruction are straightforward. The area of disagreement is for people not convicted.
1302. **The Chairperson:** I will try to walk us through this and make sure that we record that where you want it recorded.
1303. In respect of article 63D, is the Committee content with the proposed departmental amendments? They are all in tab 2. It is in respect of the prescribed circumstances that would be on the face of the Bill.
1304. **Mr McCartney:** We have reservations. This is also around the use of caution and the penalty notice under section 60 of the Justice Act 2011.
1305. **The Chairperson:** In terms of that —
1306. **Mr Elliott:** Sorry, Chair. For the purposes of clarification, is that around the retention of DNA for those who have been cautioned?
1307. **Mr McCartney:** Yes. It will treat them as a recordable offence.
1308. **Mr Elliott:** So, it was what we discussed on Tuesday.
1309. **Mr McCartney:** Yes.
1310. **The Chairperson:** Can I record Sinn Féin and SDLP abstention and DUP and Ulster Unionist assent?
1311. **The Committee Clerk:** You need to put the Question.
1312. **The Chairperson:** For the second time, is the Committee content with the proposed departmental amendments relating to article 63D?
- Question put.*
- The Committee divided:*
- Ayes 4; Noes 0; Abstentions 5.*
- AYES**
- Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*
- NOES**
- No members voted no.*
- ABSTENTIONS**
- Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*
- Question accordingly agreed to.*
1313. **The Chairperson:** The fifth amendment relates to an additional provision permitting limited retention in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. That amendment, again, is at tab 2 of the briefing paper. This is around the penalty

notice issue. I will again assume that the SDLP and Sinn Féin will want to abstain, but I need to put the Question formally. Is the Committee content with the new provision as proposed by the Department?

*Question put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

*Question, That the Committee is content with schedule 2, subject to the proposed amendments, put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Schedule 2, as amended, accordingly agreed to.*

**Schedule 3 (Amendments: fingerprints, DNA profiles, etc.)**

1314. **The Chairperson:** The Department has informed the Committee of two amendments to schedule 3 that it intends to bring forward at Consideration Stage. The first amendment relates to bringing completion of the diversionary

youth conference within the framework on the same basis as a caution. The amendment is at tab 3 of the briefing paper. Is the Committee content with the new provision as proposed by the Department?

*Question put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

1315. **The Chairperson:** The second amendment is to correct a drafting error in paragraph 6 and can also be found at tab 3 of the briefing paper. Is the Committee content with the proposed departmental amendment relating to paragraph 6?

*Members indicated assent.*

1316. **The Chairperson:** Those were the two amendments, so now let us agree schedule 3.

*Question, That the Committee is content with schedule 3, subject to the proposed amendments, put.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

**Clause 7 (Retention of fingerprints, DNA profiles, etc.)**

1317. **The Chairperson:** Do members have any other proposed amendments to clause 7? There are no amendments being brought forward at this stage.

1318. **Mr McCartney:** Clause 7 is back to page 7?

1319. **The Chairperson:** I am assuming that you want to abstain.

*Question put, That the Committee is content with the clause.*

*The Committee divided:*

*Ayes 4; Noes 0; Abstentions 5.*

**AYES**

*Mr Easton, Mr Elliott, Mr Givan, Mr Humphrey.*

**NOES**

*No members voted no.*

**ABSTENTIONS**

*Mr A Maginness, Mr Lynch, Mr McCartney, Mr McGlone, Ms McCorley.*

*Question accordingly agreed to.*

*Clause 7 agreed to.*

**New Clause**

1320. **The Chairperson:** Now, we need to deal with the new amendment that was brought forward. If members have no issues with it, I will put the Question. Is the Committee content with the new provision the departmental official outlined earlier in relation to licence arrangements relating to the release of young offenders convicted of certain serious crimes?

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

**New Clause**

1321. **The Chairperson:** Hopefully, you are bearing with us, members. It is a little bit higgledy-piggledy, I know, but we will get there. At this stage, we will deal with the departmental amendment to provide additional provision in relation to the registered intermediary scheme, as there is a consequential amendment to clause 9 that is linked to this. The Department informed the Committee of an amendment that it intends to bring forward at Consideration Stage to make additional provision in relation to the registered intermediary scheme. The amendment is at tab 4 of the briefing paper. The Committee agreed that it was content with the proposal and wording of the amendment at the meeting on 22 November.

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

*Clause 8 agreed to.*

**Clause 9 (Commencement and transitional, etc. provisions)**

1322. **The Chairperson:** As a consequence of a proposed new provision to make additional provision in relation to the registered intermediary scheme, the Department has provided an amendment to clause 9. That is at tab 4. You can refer to your tabled pack as well. On the very last page of it, there is another amendment to clause 9.

1323. **The Committee Clerk:** Members, there are two consequential amendments to clause 9. One relates to the new clause to do with the registered intermediaries. The other relates to the new clause that you agreed today. The departmental official briefed you on that earlier. Clause 9 will now have two consequential amendments as a result of agreeing the two new provisions. You are being asked to agree clause 9 as amended in two places. One is in your pack; the registered intermediaries scheme at tab 4. The other is in your tabled pack, on the very last page. There are two consequential amendments because you are adding two new provisions into the Bill.



*Question, That the Committee is content with the clause, subject to the proposed amendments, put and agreed to.*

*Clause 9 agreed to.*

*Clause 10 agreed to.*

**Schedule 4 (Repeals)**

1324. **The Chairperson:** The Department is proposing an amendment to schedule 4. The amendment is required as a result of the amendment to clause 3. The amendment is at tab 1. It is a consequential amendment.

1325. **The Committee Clerk:** Yes, it is a consequential amendment, because you have agreed an amendment to clause 3.

1326. **The Chairperson:** Is the Committee content with the proposed departmental amendment?

*Members indicated assent.*

*Question, That the Committee is content with schedule 4, subject to the proposed amendment, put and agreed to.*

*Schedule 4 agreed to.*

**New Clause**

1327. **The Chairperson:** The Committee agreed at the meeting on 4 December to table an amendment to abolish the offence of scandalising the court. The report on the Bill will reflect that the Committee will write to the Speaker to seek his views on the admissibility of the amendment prior to tabling it. That will decide whether it is within the scope of the Bill.

*Question, That the Committee is content with the new clause, put and agreed to.*

*New clause agreed to.*

1328. **The Chairperson:** Obviously, we will await the Speaker's ruling on the admissibility of it.

**Long Title**

1329. **The Committee Clerk:** Members, we are now at the end of clause-by-clause consideration of the Bill. The Committee must now consider the long title of the Bill. As a consequence of other

amendments that have been agreed, there is the proposed new provision to make additional provision in relation to the registered intermediary scheme, and the proposed new provision that you agreed earlier after the briefing from departmental officials. There are now two amendments to the long title. The first amendment is at tab 4 in your packs. It is at the bottom of appendix A, where it says, "Long title". It is adding in:

*"and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999."*

1330. That is a consequential amendment because you are adding in the new clause on the registered intermediary scheme.

1331. On the back page of your tabled pack, there is another amendment to the long title. Again, it is a consequential amendment to the new provision that you have agreed today. It reads:

*"and to provide for the release on licence of persons detained under article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998."*

1332. **The Chairperson:** Is the Committee content with the proposed departmental amendment to the long title of the Bill?

*Members indicated assent.*

*Question, That the Committee is content with the long title, subject to the proposed amendment, put and agreed to.*

*Long title agreed to.*

1333. **The Chairperson:** We will get the final report for next week.





Northern Ireland  
Assembly

Appendix 3

# Written Submissions



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## Belfast City Council

I refer to your letter of 11 July addressed to Mr Peter McNaney, Chief Executive, Belfast City Council seeking the Council's views on the above Bill.

I note the draft Bill will amend the law relating to sex offender notification, sexual offences prevention orders and human trafficking and to provide for the destruction, retention, use and other regulation of certain fingerprints and DNA samples and profiles.

Belfast City Council does not have functional responsibility in relation to these matters and, accordingly, it is not proposed that the Council will be making any formal submission in relation to the Bill.

**Ciaran Quigley**

Town Solicitor/ACX  
Chief Executive's Department  
Belfast City Council  
City Hall  
BELFAST BT1 5GS

[mccleant@belfastcity.gov.uk](mailto:mccleant@belfastcity.gov.uk)  
Tel: 028 9027 0239 (Extension 6039)

# CARE in Northern Ireland



## Criminal Justice Bill Briefing For Members of the Justice Committee

### Summary

CARE in Northern Ireland supports the principle of the new human trafficking offences in the Criminal Justice Bill to meet obligations under the European Directive on Human Trafficking.

The Northern Ireland proposals seek to copy England and Wales in the substance of the change that it is seeking to introduce, **but it achieves it through a different means, with the outcome that there will be more trafficking offences applicable in Northern Ireland than in England and Wales. The rationale for this complexity is not clear.**

However, the proposals in this Bill reflect a very minimalist approach to implementing the European Directive, casting aside the opportunity for Northern Ireland to build on its great heritage of opposing slavery by developing robust laws and leading the way in the UK. This is a terrible missed opportunity. This submission suggests amendments for the Committee's consideration in the light of the requirements of the European Directive and recommendations made by the monitoring committee of the European Council of Europe Convention on Action against Trafficking in Human Beings in their September 2012 report which was published yesterday.

### Introduction to Clauses 5 and 6

The Criminal Justice Bill contains two clauses, Clause 5 (trafficking for sexual exploitation) and Clause 6 (trafficking for labour and other exploitation), to take extraterritorial powers giving prosecuting authorities in Northern Ireland the ability to charge UK nationals and habitual residents of Northern Ireland with trafficking offences that occur completely outside of the UK. Clause 6 would also change the law so that it would be a trafficking offence to move an individual within the UK without the victim having first to enter the country (which is the current position).

These changes would ensure Northern Ireland meets the requirements of Article 10 of the European Directive on Human Trafficking.

CARE in Northern Ireland supports the principle of including trafficking within the UK for labour exploitation in the definition of trafficking offences, as this will improve the situation in Northern Ireland for victims of trafficking. We also support the extension of extraterritorial powers to prosecute UK citizens for trafficking offences committed abroad, which may not directly impact victims in Northern Ireland but elsewhere.

The changes to extraterritorial powers were enacted for England and Wales through the Protections of Freedoms Act 2012. The Department of Justice has taken **a different approach** to bringing in these requirements to that adopted within the Protection of Freedoms Act 2012:

- England and Wales **substituted** previous multiple offences with a new single offence for sexual exploitation and a single new offence for labour exploitation.
- The Northern Ireland approach is to **add** offences to both the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004. Scotland amended the Asylum Act in a similar way in 2010.

**It is not clear whether there are significant benefits to one system over another but it does mean that trafficking legislation within the UK is becoming more divergent.**



We raise a **practical point of implementation of extraterritorial jurisdiction**: how will it be decided where a UK citizen who has committed a trafficking offence abroad would be prosecuted in the UK since there are different offences in the different UK jurisdictions, and in particular what factors will make it more likely that an offence is prosecuted in Northern Ireland.

### **A Missed Opportunity: Room for Amendments**

While Clauses 5 and 6 are a welcome move, we are extremely concerned that there is, as yet, no reference to how Northern Ireland will make itself **compliant with all the other parts of the Directive**. The Northern Ireland Executive seems to be acting as if these two changes are the only changes it need make in order to become compliant with the Directive. The minimalism of this approach is extremely concerning because in the first instance the British Government suggested that the UK did not need to opt in to the Directive. There was a major campaign between June 2010 and March 2011 to persuade the government to opt in. Now that that campaign has succeeded with the decision to opt-in, it is very important to make sure that proper rather than minimalist compliance is achieved.

The scope of this Bill in relation to human trafficking is not clear. The long title says the Bill is to “amend the law relating to...human trafficking”, which suggests there could be a wide scope to tackle many of the issues related to trafficking from offences to providing support. If the scope is taken as narrowly to matters dealing with human trafficking offences since this is a criminal justice bill, CARE in Northern Ireland suggests the Committee gives consideration to the following **criminal justice issues**:

- (a) **Extension of the definitions of exploitation** within Asylum and Immigration Act 2004 to meet the requirements of the European Directive on Human Trafficking Articles 2(1) to 2(4), eg to include forced begging, consent will be irrelevant where coercion, threats or fraud etc is used to achieve the consent for the purposes of exploitation.

Lord Morrow's Draft Human Trafficking Bill covers these issues in Clauses 1 and 3.

- (b) **Setting out aggravating factors that would increase the penalty for human trafficking offences – both for sexual and labour exploitation**. We recommend that the aggravating factors listed under Article 4(2) of the European Directive – committed against a particularly vulnerable victim, endangering the life of the victim etc - should be specified in the legislation governing Northern Ireland in order for it to be compliant with the Directive, rather than being provided in sentencing guidelines.

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 2.

- (c) **Protection of victims in criminal proceedings**

Adequate protection for victims of trafficking during the investigation and prosecution of an offence should be enshrined in the legislation, including amendments to the Criminal Evidence (Northern Ireland) Order 1999 to ensure “special measures” for trafficking victims acting as witnesses (Article 12(4)). Yesterday's GRETA report urged action to protect victims during the pre-trial and court proceedings.<sup>1</sup>

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 12.

We note, however:

- at the Second Stage debate the Minister for Justice, said that he would “*look to see what is within the scope of this Bill, we will look to see what is needed in policy work and in*

1 Greta (Group of Experts on Action Against Trafficking in Human Beings), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA(2012)6, 12 September 2012, recommendation 35, page 88

*secondary legislation, and if there are further proposals for primary legislation, then I am certainly open to consideration of them” (p347, 3 July 2012); and*

- when the Protection of Freedoms Bill long title included the words “to make provision about the trafficking on people for exploitation”, the House of Lords debated amendments to bring in a legal advocate for trafficked children.

**Both of these points suggest that there could be a scope to include wider human trafficking issues in this Bill. If the Committee adopted this approach, CARE in Northern Ireland recommends the Bill should be extended to cover:**

(d) **Requirement for investigations and proceedings**

The Directive mandates that the proceedings should not be dependent on the reporting or accusation of the victim, and that the proceedings should be able to continue if the victim withdraws their statement (Article 9(1)). Given the circumstances and difficulties faced by most trafficking victims, these are key provisions to ensure improvements in the number of successful convictions, but they are not set out in the legislation governing Northern Ireland.

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 5.

(e) **Requirement for resources for investigation and prosecution**

Northern Ireland may already be complying with the provisions under the Directive's Articles 9(3) and 9(4) regarding training and the availability of proper investigative tools at a policy level. However, if this is not contained in the legislation, there is a risk that these services are vulnerable to cuts. GRETA also stressed the need for training across the board in dealing with trafficking victims, including the importance of ensuring that all First Responders are fully trained in the processes for making a referral to the National Referral Mechanism (NRM).<sup>2</sup>

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 6.

(f) **Assistance and support for victims**

There is support being provided by the Migrant Helpline and Women's Aid<sup>3</sup>, but it is not clear if this support would be available to children. CARE in Northern Ireland is concerned that without placing the Article 11 obligations to provide assistance and support to victims on a statutory footing, there is a risk of non-compliance, should any programmes be withdrawn. GRETA also made recommendations on the need for clear standards for care and assistance for victims of trafficking.

Lord Morrow's Draft Human Trafficking Bill covers this issue in Clause 8.<sup>4</sup>

(g) **Provisions relating to child victims**

Northern Ireland does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare (Articles 13-16 of the Directive). We are especially concerned that the need for a **Guardian or Representative for Trafficked Children** (Article 14(2) & 16(3)) should be addressed. In England and Wales the government has argued that there is no need for

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2 Concerns about lack of clarity for First Responders in Northern Ireland was raised in the GRETA Report, Op Cit, page 53, para 225 and also raised in concern to identifying trafficking victims who arrive through immigration, page 53, para 229. Recommendations on training are contained in recommendations 9 and 10 on page 84, recommendation 21 on page 86 and recommendation 34 on page 88.

3 See answer to AQW 1201/11-15, tabled 22/5/2012.

4 Greta Report, Op Cit, page 86, recommendation 26

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a new role, but the evidence of a large number of trafficked children lost in England and Wales between 2007 and 2010 (301 out of 942) raises significant questions about the effectiveness of current arrangements.

We note that the GRETA report raised concerns about the number of children that go missing, stated that *“a system of guardianship is essential to ensure the children’s protection and rehabilitation, assist in severing links with traffickers and minimise the risk of children going missing”* and urged action to *“ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian”*.<sup>5</sup>

The UN is encouraging governments *“to assign guardians or representatives a specific duty to advocate for the best interest of the child on a regular basis, to act as an advocate for the child as well as a bridge and focal point for the child’s interaction with other authorities and actors. The guardian or representative should also be provided with a role in ensuring that the child is able to participate in decisions.”*<sup>6</sup>

Northern Ireland has an opportunity to implement a more robust scheme and lead the way in the UK. Currently, it appears there are only a small number of children trafficked into Northern Ireland. A system of advocates/guardians would ensure (at very little cost) that the expertise necessary is available to support these vulnerable children through the care system in Northern Ireland.

Lord Morrow’s Draft Human Trafficking Bill covers this issue in Clause 11.

(h) **Introducing a National rapporteur or equivalent mechanism**

There is scope to take a more fulsome approach to implementing the Directive than has been adopted in England and Wales to meet the requirements of Article 19 – introducing a national rapporteur or equivalent mechanism.

The UN has encouraged *“clear accountability processes for their National Rapporteurs or equivalent mechanisms.”*<sup>7</sup> The UK has an interdepartmental ministerial group in place which, it has been maintained, together with the UK Human Trafficking Centre, fulfils the UK obligations. However, this monitoring system is not independent of government nor does the Ministerial group produce public reports. While neither of these requirements is explicit in the Directive, the common understanding of a National Rapporteur is that they are independent of government – that is the whole point – and reports are placed in the public domain. Other EU countries, such as Holland, which have created an independent overseer, have seen real success in the quality of information available to the government and the profile of trafficking in their parliaments.

In implementing the Directive, Northern Ireland has the opportunity to follow best practice in Europe and to lead the way in the UK with a functional, independent rapporteur who will be able to undertake the kind of research, reporting and accountability role envisioned in Article 19.

A National Rapporteur could also ensure good liaison with NGOs and the Children’s Commissioner for Northern Ireland thereby meeting two of the GRETA report recommendations for improved *“formalised arrangements with NGOs and civil society”* in Northern Ireland.<sup>8</sup>

5 Greta Report, Op Cit, pages 56-58, paragraphs 240, 245, 247, page 86, recommendations 22 and 23.

6 Prevent. Combat. Protect. Human Trafficking. Joint UN Commentary on the EU Directive – A Human Rights-Based Approach. See pages 76-7.

7 Ibid, pages 100-101

8 Greta Report, Op Cit, page 30, para 97 and page 32, para 107.

### **Conclusion**

Clauses 5 and 6 are a welcome start to ensuring Northern Ireland's compliance with the European Directive but there is a considerable way to go to ensure full compliance. CARE in Northern Ireland hopes that the Committee will recommend further legislative proposals to improve the tackling and prevention of trafficking in Northern Ireland. We commend Lord Morrow's Draft Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill to the Committee.

# Children's Law Centre



## Written Evidence to the Committee for Justice on the Criminal Justice Bill

### 1. The Children's Law Centre

- 1.1 The Children's Law Centre is an independent charitable organisation established in September 1997 which works towards a society where all children can participate, are valued, have their rights respected and guaranteed without discrimination and where every child can achieve their full potential.
- 1.2 We offer training and research on children's rights, we make submissions on law, policy and practice affecting children and young people and we run a legal advice/ information/ representation service. We have a dedicated free phone legal advice line for children and young people and their parents and carers, called CHALKY and a youth advisory group called youth@clc. Within our policy, legal, advice and representation services we deal with a range of issues in relation to children and the law, including the law with regard to some of our most vulnerable children and young people, such as looked after children, children who come into conflict with the law, children with special educational needs, children living in poverty, children with disabilities, children with mental health problems and children and young people from ethnic minority backgrounds, including Traveller children. We also produce a series of leaflets, written in conjunction with children and young people in youth@clc, for children and young people detailing children's rights and the law in a number of areas, one of which is with regard to looked after children.
- 1.3 Our organisation is founded on the principles enshrined in The United Nations Convention on the Rights of the Child (UNCRC), in particular:
- Children shall not be discriminated against and shall have equal access to protection.
  - All decisions taken which affect children's lives should be taken in the child's best interests.
  - Children have the right to have their voices heard in all matters concerning them.
- 1.4 The UK Government as a signatory to the UNCRC is obliged to deliver all of the rights contained within the Convention for children and young people. We believe that the human rights standards contained in the UNCRC should be reflected in all laws and policies emanating from the Northern Ireland Assembly as one of the devolved regions of the UK Government. From its perspective as an organisation which works with and on behalf of children and young people, both directly and indirectly, the Children's Law Centre is grateful for the opportunity to submit evidence on the Criminal Justice Bill. The Children's Law Centre has been involved in the discussion and consultation process leading up to the introduction of this Bill, particularly in relation to the retention and destruction of fingerprints and DNA of children and young people. We do not intend to comment on each clause of the Bill, restricting our comments to areas of particular concern and those of most relevance to the work of Children's Law Centre.

**The Children's Law Centre would very much welcome the opportunity to present oral evidence to the Committee for Justice on the Criminal Justice Bill, as we believe that it has potentially far reaching implications for the protection of children's rights.**

## 2. The European Convention on Human Rights

2.1 The Committee will be aware that part of this legislation is being brought forward in an attempt to rectify the incompatibility of current legislation (namely the Police and Criminal Evidence (Northern Ireland) Order 1989 or PACE(NI)) relating to the retention and destruction of fingerprints and DNA profiles with the European Convention on Human Rights (ECHR). The current law under Part VI of PACE(NI) allows the police to take a person's fingerprints or a DNA sample without their consent where they are detained at a police station having been arrested for a recordable offence.<sup>1</sup> These can then be retained indefinitely, regardless of whether a person is subsequently convicted or not. The Department of Justice (DoJ) has stated that currently the PSNI maintains a fingerprint database containing in excess of 450,000 prints from 240,000 individuals. Forensic Science Northern Ireland stores DNA profiles from samples taken from suspects, crime scenes and victims. This holds around 91,000 subject profiles and 18,000 crime scene profiles.<sup>2</sup> It is therefore reasonable to assume that the powers under PACE (NI) to take and retain fingerprints and DNA are frequently employed.

2.2 The current law was found to be incompatible with the ECHR in the case of *S and Marper v the United Kingdom*,<sup>3</sup> where the European Court of Human Rights considered whether the retention of DNA and fingerprints from innocent people was consistent with human rights law. The Court found that there had been a violation of Article 8 of the ECHR, stating:

*"In conclusion, the Court finds that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in the case of the present applicants, fails to strike a fair balance between the competing public and private interests and that the respondent State has overstepped any acceptable margin of appreciation in this regard. Accordingly, the retention at issue constitutes a disproportionate interference with the applicants' right to respect for private life and cannot be regarded as necessary in a democratic society"*<sup>4</sup>

2.3 The Court held that the retention of cellular samples and DNA profiles disclosed an interference with the applicants' right to respect for their private lives, within the meaning of Article 8 of the ECHR. It also found that the retention of fingerprints constituted an interference with the right to respect for private life. The Court found that the retention of a non-convicted persons' data may be especially harmful in the case of minors, given their special situation and the importance of their development and integration in society. It is therefore clear that the ECHR, as incorporated by the Human Rights Act 1998, is very relevant to any discussion around the contents of this Bill relating to the retention and destruction of fingerprints and DNA profiles.

2.4 In addition, we would also contend that Article 14 of the ECHR – Right to the Enjoyment of Rights and Freedoms without Discrimination, is also potentially engaged, given the disproportionate level of collection and retention of DNA from children and young people and the differential adverse impact the retention of DNA and fingerprints will have on children.

## 3. International Human Rights Standards

3.1 As the UK government has ratified the UNCRC, consideration of the Criminal Justice Bill with regard to fingerprint and DNA retention relating to children should be set within the framework

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1 A recordable offence is defined under the explanatory memorandum for the Bill as either being one which is punishable by imprisonment, or otherwise listed in regulation 2 of the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989.

2 'Consultation on proposals for the retention and destruction of fingerprints and DNA in Northern Ireland' March 2011, para.1.3.

3 December 2008; App nos. 30562/04 and 30566/04.

4 Ibid, para. 119.

of the UNCRC and other international standards and also should take into consideration all relevant recommendations of the United Nations Committee on the Rights of the Child.

- 3.2 The UNCRC is a set of non-negotiable and legally binding minimum standards and obligations in respect of all aspects of children's lives which the Government has ratified. The Government has therefore given a commitment to implement the terms of the Convention by ensuring that all law, policy and practice relating to children is in conformity with UNCRC standards. The UK Parliamentary Joint Committee on Human Rights has described the obligations the Convention places on Government as follows:

*"It should function as a set of child-centred considerations to be used by all departments of government when evaluating legislation and policy making"*

- 3.3 All children and young people under 18 are entitled to enjoy the protection of all rights afforded by the UNCRC and to the rights enshrined in other international standards such as the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines),<sup>5</sup> the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)<sup>6</sup> and the United Nations Guidelines for the Protection of Juveniles Deprived of their Liberty.<sup>7</sup>
- 3.4 Article 40 of the UNCRC requires every child under 18 who has been alleged or accused of having infringed the penal law to be afforded the following minimum rights:
- i) To be presumed innocent until proven guilty according to law;
  - ii) To be informed promptly and directly of the charges against him or her, and, if appropriate through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
  - iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance, and, unless it is considered not to be in the best interests of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
  - iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
  - v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
  - vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
  - vi) **To have his or her privacy fully respected at all stages of the proceedings (our emphasis)**
- 3.5 State parties are required under Article 40 to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law.

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5 Adopted by General Assembly Resolution 45/112 of 1990.

6 Adopted by General Assembly Resolution 40/33 of the 29th November 1985.

7 Adopted by General Assembly Resolution 45/113 of the 14th December 1990.

In addition Article 16 of the UNCRC states that:

*“No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*

*The child has the right to the protection of the law against such interference or attacks”*

- 3.6 The United Nations Committee on the Rights of the Child recommended in October 2002<sup>8</sup> that the United Kingdom should establish a system of juvenile justice that fully integrates into its legislation, policies and practice the provisions and principles of the Convention, in particular Articles 3, 37, 39 and 40 and the other international standards in this area outlined above.<sup>9</sup> It repeated this recommendation in October 2008,<sup>10</sup> adding that General Comment No. 10 of the Committee on the Rights of the Child should also be fully integrated.

The Committee expressed its concern about the fact that:

*“DNA data regarding children is kept in the National DNA Database irrespective of whether the child is ultimately charged or found guilty”<sup>11</sup>*

The Committee recommended that the UK Government:

*“ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy, including by introducing stronger regulations for data protection”<sup>12</sup>*

The United Nations Committee also recommended that the United Kingdom government should establish the best interests of the child as the paramount consideration in all legislation and policy affecting children, notably within criminal justice and immigration.<sup>13</sup>

- 3.7 One of the Children’s Law Centre’s major concerns with regard to the retention of DNA and fingerprints is the fact that retention will occur in this jurisdiction within the context of an extremely low minimum age of criminal responsibility. The age of criminal responsibility continues to be 10 years and below that age the child is irrebuttably presumed to be incapable of ‘offending behaviour’.

- 3.8 International standards with regard to the minimum age of criminal responsibility are very clear. The UN Committee on the Rights of the Child in its 2002 Concluding Observations, following its examination of the UK Government’s compliance with the UNCRC, stated that the age at which children enter the criminal justice system was low and made a clear recommendation that the UK government considerably raise the age of criminal responsibility.<sup>14</sup> This recommendation was reiterated by the UN Committee in its 2008 examination of the UK Government’s compliance with the UNCRC.<sup>15</sup> The Committee has previously commented that states should not set the minimum age of criminal responsibility too low. A minimum age of criminal responsibility below the age of 12 is not considered acceptable by the Committee. States are encouraged to increase the minimum age of criminal responsibility to 12 at a minimum and then to seek to continue to increase it to a higher age level.<sup>16</sup> The Chairperson of the UN Committee on the Rights of the Child has

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8 Concluding Observations of the Committee on the Rights of the Child, CRC/C/15 ADD.188, 4 October 2002.  
9 Paragraph 58 (a), CRC/15/Add.188, 4 October 2002 and Para 27 and 77 CRC/C/GBR/CO/4, 3 October 2008.  
10 Concluding Observations of the Committee on the Rights of the Child, CRC/C/GBR/CO/4, 3 October 2008.  
11 Para 36a), CRC/C/GBR/CO/4 3rd October 2008.  
12 Para 37a), CRC/C/GBR/CO/4 3rd October 2008.  
13 Ibid, para 27.  
14 CRC/C/15/Add.188 paragraphs 59 and 61.  
15 Para 78a) CRC/C/GBR/CO/4.  
16 General Comment No. 10 Children’s Rights in Juvenile Justice CRC/C/GC/10 April 2007

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further elaborated that the general understanding of the Committee was that industrialized, democratic societies would go even further as to raising the minimum age of criminal responsibility to an even higher age, such as 14 or 16.<sup>17</sup> We were therefore pleased that the recent report of the Review of Youth Justice recommended that the minimum age of criminal responsibility should be raised to 12 with immediate effect and following a period of review of no more than three years, consideration should be given to raising the age to 14.<sup>18</sup>

- 3.9 Regrettably it is still currently the case that once a child reaches the age of 10, s/he can be arrested on suspicion of a criminal offence and it is within this context that the Committee must consider the issue of taking and retaining a child's DNA or fingerprints. Prior to the *S and Marper* case, children below the minimum age of criminal responsibility who came into contact with the criminal justice system were also subjected to the practices of fingerprinting and DNA evidence gathering techniques and they too had their DNA profiles retained, regardless of their inability to be criminal culpable. While we welcome the fact that following the judgment children aged under ten have had their profiles removed from the DNA database and will not have profiles retained in the future, we continue to have extremely serious concerns about the collation and retention of fingerprints and DNA data from children aged as young as 10.

#### 4. Consultation process and Section 75 of the Northern Ireland Act 1998

- 4.1 The Criminal Justice Bill is based on the legislative proposals for the retention and destruction of fingerprints and DNA in Northern Ireland that the DoJ issued for public consultation in March 2011. The Children's Law Centre responded to this consultation in June 2011. In our response we raised many of the concerns that appear in this written evidence. We also raised serious concerns with regards to the decision taken by the DoJ that, following an Equality Screening of the policy proposals, an Equality Impact Assessment (EQIA) was determined not to be required. We highlighted how children and young people are the most vulnerable group in our society and are covered under the age category in section 75 of the Northern Ireland Act 1998. We also highlighted the fact that children are not a homogenous group and will be afforded further protection under other categories of section 75. The most relevant protections in relation to the consultation exercise, in addition to age, were protection on grounds of gender, race and religion due to the disproportionate number of young males who come into contact with the criminal justice system, including young black and young Catholic males.

- 4.2 The Children's Law Centre understands that the DoJ did not publish a summary of consultation responses it received and one is not published on the Department's website.<sup>19</sup> The Explanatory and Financial Memorandum for the Bill states that following the public consultation on the retention and destruction of DNA and fingerprints:

*"Overall, the proposed framework was viewed favourably by most respondents as a proportionate and balanced approach to replacing the current indefinite retention policy. As expected, given the subject matter, a wide range of views was expressed on various aspects of the policy proposals."*<sup>20</sup>

- 4.3 As the DoJ do not appear to have published a summary of the consultation responses the Children's Law Centre is unaware of how many responses the DoJ received to the consultation and what the nature of all those responses was. We are aware however that at least one other NGO responded to the consultation process echoing many of the concerns that the Children's Law Centre (CLC) had. It is therefore very disappointing that the clauses of

17 Professor Yanghee Lee, Chairperson of the UN Committee on the Rights of the Child - The Convention On The Rights Of The Child From Geneva To Northern Ireland, Bringing Children's Rights Home CLC Annual Lecture 13th March 2008.

18 'A Review of the Youth Justice System in Northern Ireland' September 2011, p. 165.

19 Telephone conversation with DoJ official, 23rd August 2012.

20 Criminal Justice Bill 'Explanatory and Financial Memorandum' para.29.

the Criminal Justice Bill that deal with the retention and destruction of fingerprints and DNA are clearly based on the DoJ's initial proposals, which in the absence of the publication of a summary of responses by the DoJ, appears to indicate that the Department has taken little or no cognisance of the consultation responses it has received and the human rights concerns raised therein.

## 5. Criminal Justice Bill

5.1 In general, the Children's Law Centre has serious concerns about the taking of fingerprints and the deriving of DNA profiles from DNA samples taken from children and young people and the retention of this material. We believe that fingerprinting and taking DNA from a child is entirely disproportionate, unjustifiable and in clear breach of children's rights standards. We firmly recommend that these practices as they relate to children be halted immediately within the formal criminal justice system.

5.2 Information obtained through a 'freedom of information request' by one Non-Governmental Organisation, the Pat Finucane Centre, revealed evidence of the widespread retention of DNA of children by the PSNI in cases where no conviction or cautioning has followed. *'In total, DNA is held on at least 3,065 under 18's, of whom 1,119 have no convictions or cautions.'*<sup>21</sup>The Centre described this as:

*"...a serious infringement of the rights of these children. We do not question the need to retain the DNA of serious violent and/or sex offenders but to maintain records on children who have not been convicted of any offence is bizarre."*<sup>22</sup>

The Belfast Telegraph also published figures in 2011 that indicated that profiles from 91,327 people were on the DNA database in late 2010. Of these, 34,130 belonged to a person who was not charged or reported and had been released unconditionally. They included samples from 228 children aged between 16 and 18, and 92 samples from children aged between 10 and 15.<sup>23</sup>

5.3 The Northern Ireland Commissioner for Children and Young People has expressed concern about this issue, calling on both the PSNI and Policing Board to reconsider the retention of DNA of under 18's and pointing out that it potentially breaches Articles 16 and 40 of the UNCRC.<sup>24</sup>

5.4 We are also extremely concerned that the contents of the Criminal Justice Bill in relation to the retention and destruction of fingerprints and DNA in Northern Ireland do not fully and adequately consider the particular vulnerabilities of children and young people. In the *S and Marper* judgment, **the Court found that the blanket and indiscriminate nature of the power of retention of DNA data of persons suspected but not convicted of offences did not strike a fair balance between private and public interests.** The Court also commented on the limited possibilities for an acquitted individual to have the data removed from the nationwide database or the materials destroyed and on the fact that the "retention of the unconvicted persons data may be especially harmful in the case of minors".<sup>25</sup>

5.5 The judgment created an expectation among many persons who had been arrested but either acquitted in court or had had charges dropped, that they would be removed from the DNA

21 The PSNI has indicated that this figure may be higher: "there are a further 620 DNA records on a separate system which would have to be manually checked against the records held on the main system to ensure there is no duplication" Statewatch, 2006.

22 Statewatch 2006

23 Belfast Telegraph 'Police face DNA data wipeout: European ruling may force PSNI to delete a third of profiles it holds' by Adrian Rutherford, Wednesday, 16th March 2011.

24 NICCY, 2006

25 Ibid. para. 124.

database, and hence more broadly the practice of holding innocent persons DNA on the national database would be discontinued. Rather than adopting this approach, the Criminal Justice Bill proposes to continue to retain the DNA data and fingerprints of innocent children and young people.

In the interests of clarity we have listed the clauses of Criminal Justice Bill which are most relevant to children and young people. We have also devised some hypothetical scenarios to explore how the provisions of the Bill may apply to children and young people in practice:

- Clause 7(1) of the Bill inserts new Articles as set out in Schedule 2 of the Bill after Article 63A of PACE. The proposed new Article 63B of PACE provides that in relation to fingerprints and DNA profiles to which Article 63B applies, these must be destroyed unless the material is retained under any of the powers the new Articles 63C to 63J propose. DNA samples, which are samples such as a mouth swab, plucked hair roots or a blood sample are used to form a DNA profile. The proposed Article 63M would introduce a general rule that these be destroyed as soon as a DNA profile has been derived, or if sooner, before the end of a period of 6 months beginning from the date on which the sample was taken. However, the Chief Constable would be allowed to apply to a District Judge (Magistrates' Court) for an order that the sample be retained for periods of 12 months at a time.

- It should also be noted that Schedule 3 of the draft Bill proposes to insert a new Article 53B into PACE. This states that any reference to a person convicted of an offence includes a reference to a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted. References to a person convicted of an offence will also include a person found not guilty of an offence by reason of insanity, or a person found to have been under a disability and to have done the act charged in respect of the offence.

- The proposed Article 63D(1) would apply where a person is arrested for or charged with a qualifying offence<sup>26</sup> and is not convicted of that offence and where fingerprints are taken or a DNA profile is derived from a DNA sample taken in connection with the investigation of the offence. Article 63D(2) would allow the retention of this material indefinitely where a person has previously been convicted of a recordable offence which is not an excluded offence, or is convicted of that offence prior to the material being required to be destroyed. An excluded offence is defined under Article 63D(14) as being a recordable offence which is not a qualifying offence, is the only recordable offence of which the person has been convicted and which was committed when the person was aged under 18 and for which the person was not given a custodial sentence of 5 years or more. A hypothetical scenario here could be that child A is arrested for assault occasioning actual bodily harm, a qualifying offence. His fingerprints are taken and a DNA profile is derived from a DNA sample taken in connection with the investigation of the offence. However, child A is not subsequently charged or convicted of assault occasioning actual bodily harm. Child A's criminal record contains two cautions for shop lifting sweets, a recordable offence, and his fingerprints and DNA are therefore retained indefinitely as a caution is considered to be a conviction for the purposes of the draft Bill.

- Under the proposed Article 63D(4) if a person is charged with a qualifying offence but is not convicted of that offence and fingerprints are taken or a DNA profile is derived from a DNA sample which has been taken in connection with the investigation of the offence, then under Article 63D(6) the material is retained for 3 years. The retention period of 3 years provided in Article 63D(6) can be extended upon application by the Chief Constable to a District Judge (Magistrates' Courts). The period may be extended by up to 2 years under Article 63D(9) (b). The person from whom the material was taken can appeal the making of the order to the County Court, as can the Chief Constable if the order is refused. According to the explanatory and financial memorandum for the Bill, the provisions under Articles 63D(4) and (5) apply

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Qualifying offences are listed under Article 53A of PACE, which is to be inserted by section 13 of the Crime and Security Act 2010. The offences listed include violent and sexual offences. This provision is not yet in force however.

to those persons who have no previous convictions.<sup>27</sup> A hypothetical scenario here could be that child B, who has no previous convictions, is charged with assault occasioning actual bodily harm. As part of the investigation his fingerprints are taken and his DNA profile is derived from a DNA sample. Child B denies the allegation and is acquitted at his subsequent trial. His fingerprints and DNA are retained for 3 years, but before the end of this period the Chief Constable successfully applies to have the retention period extended and child B's fingerprints and DNA are retained for a further 2 years.

- Under the proposed Article 63D(5) where a person is arrested for a qualifying offence, **but not charged** with that offence and fingerprints are taken or a DNA profile is derived from a DNA sample taken in connection with the investigation of the offence, then under Article 63D(6) the material can still be retained for 3 years. The retention period of 3 years provided in Article 63D(6) can be extended upon application by the Chief Constable to a District Judge (Magistrates' Courts). The period may be extended by up to 2 years under Article 63D(9)(b). However any of the 'prescribed circumstances' must first apply for the material to be retained for an initial 3 years and the Northern Ireland Commissioner for the Retention of Biometric Material must consent to the retention. The prescribed circumstances are not outlined within the draft Bill and Article 63D(14) simply states that prescribed means prescribed by an order made by the Department of Justice.<sup>28</sup> Article 63D(13) states that the Commissioner may consent if he considers it appropriate to retain the material. Article 63D(11) provides that the Department of Justice must appoint the Commissioner. A hypothetical scenario is more difficult to conceive here, as the prescribed circumstances are not detailed within the draft Bill, nor are the circumstances in which it may be appropriate for the Commissioner for the Retention of Biometric Material to consent to the retention of fingerprints or DNA profiles, or the procedure by which the Chief Constable will apply to the Commissioner for the retention of the material. The Children's Law Centre considers this lack of clarity within the legislation to be very concerning and we would respectfully ask the Committee to examine this issue further. However, our current understanding of this provision is that if child C, who has no previous convictions, was arrested for assault occasioning actual bodily harm and had his fingerprints and a DNA sample (from which a DNA profile is then derived) taken as part of the investigation, these could be retained for 3 years if prescribed circumstances apply and the Commissioner consents to the retention, even though child C is not subsequently charged with the offence. Child C's fingerprints and DNA profile could then be retained for a further 2 years if the Chief Constable successfully applies to have the retention period extended.

- The proposed Article 63E will also allow the retention of fingerprints, or DNA profiles derived from DNA samples that have been taken even where a person is arrested for or charged with a minor offence and where they are not convicted of that offence. If a person is arrested or charged with a recordable offence other than a qualifying offence, is not convicted of the offence in respect of which they were arrested or charged and if material is taken from them in connection with the investigation of the offence for which they were arrested or charged, that material may still be retained indefinitely if the person has previously been convicted of a recordable offence which is not an excluded offence, as defined above. The hypothetical scenario involving child A could again be employed here, only on this occasion child A is arrested for theft, a recordable offence. His fingerprints are taken and a DNA profile is derived from a DNA sample taken in connection with the investigation of the offence. However, child A is not subsequently charged with the theft. Child A's criminal record contains two precious

27 Ibid, para.74.

28 The Minister for Justice has stated that these prescribed circumstances have been introduced due to the police making the case for retention where 'the victim is a juvenile or a vulnerable adult or is associated with the suspected offender perhaps a family member. These are circumstances in which the victim is more likely to be susceptible to pressure not to give evidence.' (Official Report (Hansard) Northern Ireland Assembly, Tuesday 3rd July 2012, p. 330). The Department of Justice 'Consultation on proposals for the retention and destruction of fingerprints and DNA in Northern Ireland' (March 2011) stated at para 6.3 that examples of prescribed circumstances 'could be that a young person or vulnerable adult is a victim of the alleged offence or where the victim is not able or not willing to come forward and give evidence.'

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cautions for shop lifting, a recordable offence, and his fingerprints and DNA are therefore retained indefinitely as a caution is considered to be a conviction for the purposes of the draft Bill.

- In relation to children convicted of a first minor offence Article 63H will apply. It provides that where a person is convicted of a recordable offence other than a qualifying offence, has no previous convictions for a recordable offence, was aged under 18 at the time of the offence and has had their fingerprints taken or a DNA profile has been derived from a DNA sample taken in connection with the investigation of the offence the amount of time that persons DNA or fingerprints will be retained is linked to the length of the sentence they receive. Where the person is given a custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of a period consisting of the term of the sentence plus 5 years. It would appear from this provision that if, for example, a child received a 1 year sentence, their material could be retained for 6 years. If a child received a custodial sentence of 5 years or more, their material may be retained indefinitely.

- Article 63H also allows the retention of fingerprints and DNA where children are given non-custodial sentences in respect of a first minor offence. Where a non-custodial sentence is passed, the material may be retained under Article 63H(4) for a period of 5 years beginning from when the material was taken. However, if the person receives another conviction for a recordable offence before the end of this period, the material may be retained indefinitely. What is not clear from this clause of the Bill is whether cautions, which the Bill proposes to include within the definition of persons convicted of an offence, will also constitute a non-custodial sentence for the purposes of the legislation. As can be seen below, the Children's Law Centre is particularly concerned about the inclusion of cautions within the definition of persons convicted of an offence. We would therefore oppose the suggestion that cautions also be considered as non-custodial sentences for the purposes of the legislation, opening up the prospect of children and young people having their fingerprints and DNA retained for 5 years upon receiving a caution. A hypothetical scenario here which can be clearly envisaged under the current proposals as we understand them could involve child D. Child D is 10 years old and is arrested and charged with shoplifting, a recordable offence. Her fingerprints are taken. The Public Prosecution Service (PPS) decides to prosecute child D for theft. Child D's case proceeds to the Youth Court and she pleads not guilty. Child D is convicted of theft following her trial. This is child D's first offence and a Youth Conference Order is made, which child D consents to. The plan devised for child D at the youth conference is approved by the Youth Court and child D complies with it. Child D has now been convicted of a recordable offence within the terms of the draft Bill and has received a non-custodial sentence, meaning her fingerprints are retained for 5 years. Four years later, child D is again arrested by police for theft, aged 14. Child D admits to the offence immediately. The case is referred to the PPS who direct that child D be offered a caution. Child D accepts a caution for the offence. She has now received another conviction for a recordable offence under the terms of the draft Bill, within the 5 year retention period for her fingerprints, and so Child D's fingerprints are retained indefinitely.

- If however, under Article 63F, a child or young person is convicted of a recordable offence and fingerprints were taken or a DNA profile was derived from a DNA sample taken in connection with the investigation of the offence, that material may be retained indefinitely unless Article 63H applies. In effect, this would mean that if a child or young person has fingerprints or DNA taken in connection with the investigation of a recordable offence for which they are convicted, and has a previous conviction for a recordable offence, their fingerprints or DNA profile will be retained indefinitely. For example, a hypothetical scenario may involve child E, who is arrested for theft aged 16. Her fingerprints are taken in connection with the investigation of the offence. She has previously received a caution for theft when she was 14, which is considered to be a conviction for the purposes of the draft Bill. Child E admits to the theft and the PPS directs that she be offered a caution. Child E accepts a caution. Therefore, her fingerprints are retained indefinitely.

5.6 **We believe that the proposals under Articles 63D and 63E of the draft Bill significantly undermine the presumption of innocence and due process, as they would allow the retention of the fingerprints and DNA profiles of children and young people who are not convicted of an offence for which that material is taken as part of an investigation and who are therefore innocent children and young people.** The implication from the above proposals is that children and young people who are arrested but not charged with an offence, or charged but not convicted of an offence are somehow not totally innocent or less innocent of the offence for which they did not receive a conviction or may not even have been charged. We contend that the proposals to retain the DNA data of under 18's who have not been convicted of an offence is in breach of the Government's obligations under Article 40 of the UNCRC. Under Article 40, State Parties are obligated to recognise the right of all children,

*"...alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society"*

5.7 In addition, Article 40 affords all children the right to be presumed innocent until proven guilty according to law. We contend that the retention of DNA data of children and young people under the age of 18 who have not been convicted of an offence, or may not even have been charged with an offence, entirely undermines the child's right to be presumed innocent until proven guilty. We agree with the argument put forward by the Applicant in the *S and Marper* case that,

*"...retention of the records cast suspicion on persons who had been acquitted or discharged of crimes, thus implying that they were not wholly innocent. The retention thus resulted in stigma which was particularly detrimental to children as in the case of S..."*<sup>29</sup>

5.8 The UNCRC Committee's General Comment no. 10 on Juvenile Justice also illustrates the fundamental importance of the presumption of innocence of children in conflict with the law. It emphasises the child's right to be treated in accordance with this presumption and the duty on State Parties to respect the presumption of innocence. It states:

*"The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the penal law has the benefit of doubt and is only guilty as charged if these charges have been proven beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice..."*<sup>30</sup>

5.9 We strongly oppose the retention of fingerprints and DNA data of children who have not been convicted of an offence in relation to which fingerprints or DNA data have been taken, as we believe that such a practice runs entirely contrary to the Government's obligations under international standards.

5.10 We also do not believe that the retention of the fingerprints taken or a DNA profile derived in connection with the investigation of minor, recordable offences, which ultimately leads to the conviction of a child or young person is a proportionate response. As the legislation itself states, recordable offences are less serious, minor offences. The proposals contained within this Bill are extremely disappointing from the perspective of aiming to strike the correct balance between the protection of rights and security. We do not believe that this Bill gives adequate consideration to obligations to uphold the rights of children and young

29 Ibid, para. 89.

30 Para 42, General Comment No. 10 (2007) Children's rights in juvenile justice CRC/C/GC/10

people, in relation to whom we believe the taking and retaining of fingerprints and DNA is entirely disproportionate. Under the proposed Article 63F and 63H, fingerprints or DNA will be retained for a minimum of 5 years and possibly indefinitely, if a child or young person commits two minor offences, or receives a custodial sentence of over 5 years.

5.11 The Edinburgh *“Study of Youth Transitions and Crime”*<sup>31</sup> followed the progress of 4,000 young people who started secondary school in Edinburgh in autumn 1998. It found that youth crime can be contained by avoiding the punishment and stigmatisation of young people during their formative years. It also found that young people are much more likely to grow out of crime if they are not damaged by intervention from the criminal justice system. This study found that the chances that a young person will stop offending altogether are sharply reduced by contact with the police. It must be concluded therefore that a policy of increased intervention by the juvenile justice system is very unlikely to lead to a reduction in youth offending.<sup>32</sup>

5.12 The European Court of Human Rights in issuing its judgment in *S and Marper* drew on international standards including Recommendation R (92)1 of the Council of Europe’s Committee of Ministers, which was adopted without reservation by the United Kingdom. This recommendation sets out that the results of DNA analysis should be routinely deleted when no longer necessary to keep them for the purposes for which they were used, and that retentions should only take place,

*“where the individual concerned has been convicted of serious offences against the life, integrity or security of persons’ subject to ‘strict storage periods defined by domestic law”.*

5.13 The only exception set out for retaining the DNA analysis of person who has not been convicted or charged with an offence is in relation to national security, or at the express request of the individual.<sup>33</sup> Article 63F and H will apply to recordable offences, which the legislation acknowledges to be minor offences, rather than serious offences against the life, integrity or security of persons, which would appear to fall under the definition of a qualifying offence. To allow material to be potentially retained indefinitely in such circumstances would not accord with the concept of it being retained subject only to strict storage periods and so would not be in accordance with international human rights standards the United Kingdom has adopted without reservation.

5.14 The Children’s Law Centre is also particularly concerned by the proposal to include cautions within the definition of persons convicted of an offence for the purposes of retaining fingerprints and DNA profiles under the proposed Article 53B. The Public Prosecution Service Code for Prosecutors states that cautions are:

*“a formal reprimand by Police and, although not a conviction, is recorded on a person’s criminal record for a period of 30 months for youths and 5 years for adults.”*<sup>34</sup>

5.15 It is clear from this that cautions do not have the same effect as convictions under other aspects of the criminal law. It is entirely possible that under the proposed legislation a child who receives two cautions for minor, recordable offences will have their fingerprints or DNA profile retained indefinitely. We believe this to be entirely disproportionate. It runs contrary to the purported purpose of a caution, which is to divert children away from the criminal justice system. The Children’s Law Centre does not believe that cautions adequately do so at present, as we do not believe that the current operation of diversionary measures has enough emphasis on diversion out of the formal criminal justice system and still involves harmful contact with the criminal justice system. However this present situation will only

31 [www.law.ed.ac.uk/cls/esytc/](http://www.law.ed.ac.uk/cls/esytc/)

32 DNA Database: Fuelling Children’s Criminality? Terry Dowty and Dr Helen Wallace, ChildRight May 2008

33 Recommendation no.R(91)1 of the Committee of Ministers on the use of analysis of deoxyribonucleic acid (DNA) within the framework of the criminal justice system (adopted by the Committee of Ministers on 10 Feb 1992 at the 470th meeting of ministers deputies (paragraph 8))

34 Public Prosecution Service ‘Code for Prosecutors’ 2008, p. 16.

be exacerbated if the use of cautions results in a child's fingerprints and DNA profile being retained indefinitely. We also believe that it would be useful to clarify exactly what is meant by a caution in this context. For example, will other diversionary options, such as informed warnings or diversionary youth conferences, which do not currently constitute a conviction, fall under the scope of this provision? The Children's Law Centre would oppose the extension of the legislation to include these diversionary disposals, but would respectfully submit that in the interests of clarity the Committee should inquire as to whether they will come within the scope of the legislation.

- 5.16 General Comment no. 10 of the Committee on the Rights of the Child states that in relation to interventions and diversions from the criminal justice system:

*"Children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration and the child's assuming a constructive role in society (art. 40 (1) of CRC)."*<sup>35</sup>

The General Comment goes on to state that:

*"The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as "criminal records" and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law."*<sup>36</sup>

- 5.17 It is entirely clear therefore that the inclusion of cautions within the definition of convictions for the purposes of this legislation is contrary to international standards, which specifically prohibit children who have been diverted from being viewed as having a previous conviction.

- 5.18 We do not believe that the proposal to indefinitely retain the DNA of children and young people convicted of offences adequately considers the particular circumstances of children and young people. Indefinite retention of the DNA of a child or young person makes assumptions about the likely actions of children in the future and disproportionately impacts on children, particularly given that their DNA can be held for the rest of their lives. When one considers this penalty as a percentage of the lifetime of a young person it becomes clear that further consideration of the lives of children is necessary in formulating proposals for the retention of the DNA of under 18's. It is also difficult to see how it can be determined, through the proposals to indefinitely retain the DNA of a child, that a child or young person is likely to pose a significant risk of harm by committing further offences when one considers the developmental nature of young people and the fact that their age, maturity and understanding changes so rapidly. We are challenged as to how such a determination can be made with regard to children, particularly given that the development of children is an ongoing process.

- 5.19 Article 40 of the UNCRC places an obligation on the state parties to recognise the right of all children, even those who have infringed the penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and in a way which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. The Committee on the Rights of the Child, in its' General Comment no. 10 has said:

*"The Committee reminds States parties that, pursuant to article 40 (1) of CRC, reintegration requires that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For*

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35 Ibid para.23.

36 Ibid, para. 27.



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*a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society.*<sup>37</sup>

- 5.20 Retention of fingerprints and DNA profiles for a minimum of 5 years and possibly for an indefinite period, particularly where a child has received cautions which are not measured as convictions under other aspects of the criminal law, does not correspond with the state's obligations under Article 40 in this regard.
- 5.21 The Children's Law Centre is extremely supportive of the recommendation in the Youth Justice Review Report that diversionary disposals should not attract a criminal record or be subject to employer disclosure and young offenders should be allowed to apply for a 'clean slate' at age 18 in line with international standards. The proposals within this Bill in relation to cautions do not sit with these recommendations.

## 6. Conclusion

- 6.1 In summary, the Children's Law Centre has serious concerns around the proposals contained within the Criminal Justice Bill, as we believe they have potentially far reaching implications for the protection of children's rights, both for those children and young people who are not convicted of an offence and those who are. The Children's Law Centre is grateful for the opportunity to submit evidence on the Criminal Justice Bill and we hope that the Committee finds our comments helpful in examining the contents of the Bill. We would very much welcome the opportunity to provide oral evidence to the Committee on the contents of the Bill, and are happy to further discuss or clarify anything within this written evidence in advance of this.

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37 Ibid, para.29.

## Cllr Ian McCrea MLA



**Cllr Ian McCrea MLA**

Member of the Northern Ireland Policing Board  
34 Fairhill Road  
Cookstown  
BT80 8AG

**Tel:** 028 867 64952

**Email:** johnnychartres@ianmccrea.com  
cookstown@ianmccrea.com

OUR REF: C/09/256  
TO: Paul Givan - Chair of Justice Committee  
FROM: Ian McCrea MLA  
DATE: 26 July 2012  
RE: Tagging on of Miscellaneous Provision to Justice Bill

Dear Paul,

I am writing to you as Chairman of the Justice Committee requesting that a miscellaneous provision be tagged on to the current Justice Bill in relation to statutory prohibitions on holding firearms.

As I am sure you are aware, that currently there exists an 8 year prohibition or a life prohibition, which prohibits a person from purchasing, acquiring or possessing a firearm and ammunition at any time if they are sentenced or were a suspended sentence is imposed. Both of these tariffs of prohibition can be appealed under Article 63 of the The Firearms (Northern Ireland) Order 2004 [2004 No.702 (N.I.3)], but these appeals prove extremely difficult to approve.

I feel that if the tariff of prohibition was varied to reflect more accurately the seriousness of an offence rather than those who are convicted of a non violent offence be tarnished with the same period of prohibition, it would produce a fairer system.

I trust this request can be catered and if you would like to discuss the matter further please do not hesitate to contact my office.

Thanking you in anticipation of your reply.

Regards,

**Cllr Ian McCrea MLA**

# Committee on the Administration of Justice

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**From:** Brian Gormally <brian@caj.org.uk>  
**Sent:** 22 August 2012 11:22  
**To:** +Comm. Justice Public Email  
**Cc:** Daniel Holder; Jacqueline Monahan; Gemma McKeown; Donal Lyons  
**Subject:** Request to submit comments on the Criminal Justice Bill

FAO Christine Darrah  
 Clerk to the Committee for Justice

Dear Christine,

Thank you for your letter addressed to my predecessor, Mike Ritchie. It is not our intention to submit further comments on the contents of this Bill at this time. In respect of the provisions relating to sex offenders, we made a detailed response to the original consultation – which can be found at <http://www.caj.org.uk/contents/995> - and we have nothing further to add on those matters. With regard to the sections on people trafficking, we understand these are necessary to conform with article 16 of Directive 2011/36/EU which calls for legislation in member states to criminalise trafficking by nationals or residents in countries other than the member state in question. The proposals on retention of DNA are, we understand, designed to bring Northern Ireland law in line with that proposed for England and Wales which, in turn, is based on the Scottish situation. In our response to the original Home Office consultation in 2009 – which can be found at <http://www.caj.org.uk/contents/375> - we recommended that the Scottish precedent be followed rather than the much more extensive retention powers then proposed. In that context we do not have fundamental reservations about the proposed powers.

Thank you again for your request for comment. CAJ is very interested in the proceedings of the Committee and we would encourage you to contact us for comment and opinion at any time.

Yours sincerely,

Brian Gormally  
 Director  
 Committee on the Administration of Justice Ltd (CAJ)  
 2nd Floor, Sturgen Building  
 9-15 Queen Street  
 Belfast  
 BT1 6EA

Tel - 028 9031 6000  
 Mobile - 0770 348 6949  
[www.caj.org.uk](http://www.caj.org.uk)



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## **CAJ's submission no. S359**

**CAJ's submission  
Department of Justice on its 'Sex offender notification  
and violent offender orders: Proposals for Legislation,  
a consultation paper'**

**October 2011**

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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### *What is the CAJ?*

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Joseph Rowntree Charitable Trust and the Oak Foundation.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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## **Submission to the Department of Justice on its ‘Sex offender notification and violent offender orders: Proposals for Legislation, a consultation paper’**

The Committee on the Administration of Justice (‘CAJ’) is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law. CAJ welcomes the opportunity to respond to the present consultation. We also welcome the summaries of the proposals at the beginning of each chapter as it makes the consultation more accessible.

### **The Proposals**

In summary the Department proposes to:

- Change the law for persons who are presently required to remain on the ‘sex offender register’ for life by introducing a review mechanism whereby their names can be removed when the police decide there is no longer a risk to the public. Such a review can only occur 15 years after the person is released from prison;
- Change the law to allow the removal of persons from the register who were historically convicted of offences which are no longer crimes;
- Introduce a series of changes expanding the notification requirements for persons convicted of sexual offences who are required to register;
- Introduce ‘violent offender orders’, which will allow the police to seek a court order imposing similar notification requirements to those currently in place for many persons convicted of sex offences on those convicted of certain violent offences.

### **Proposal: introduce a review mechanism for persons currently subject to indefinite notification**

The Department is proposing to change the law for persons who are presently required to remain on the ‘sex offender register’ for life by introducing a review

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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mechanism whereby their names can be removed once the police decide there is no longer a risk to the public. Such persons can only apply to be removed from the register once they have been on it for 15 years since leaving prison.

CAJ acknowledges the complexity of the assessment that needs to be made in order to protect the rights of potential victims whilst paying due regard to the rehabilitative process of imprisonment. The ongoing harm suffered by the victims of sexual offences must also not be forgotten, caused not only by the offence itself, but also by the experience of having to report the crime and pursue a prosecution. Sexual offences are generally the most difficult to prosecute successfully, and there are enormous social and stigma barriers for individuals in coming forward. There is also a need to strike the appropriate balance between the need to protect the public, where necessary, on the one hand, whilst not discounting the situation of individuals who have served a sentence for their crimes and may not reoffend on the other. This is obviously a difficult balance to strike and CAJ does not presume to suggest that the solution is an easy one.

The development of review mechanisms for indefinite notification is required by the judgment in *R (F and Thompson) v. Secretary of State for the Home Department*.<sup>1</sup> As set out in the consultation document this judgement held that the indefinite notification period prescribed by s. 82 of the Sexual Offences Act 2003 for sentences of over 30 months, with no possibility of review, is incompatible with Article 8 of the European Convention on Human Rights (ECHR).

Notwithstanding the broader quality of the consultation document CAJ does note that there is relatively limited mention or analysis of the human rights framework within the document.<sup>2</sup> Considering the potential for misrepresentation of the implications of the human rights framework, we believe that there would have been benefit in wider analysis of the same within the proposals. The document records that the Supreme Court in the above judgement found the indefinite notification requirements incompatible with Article 8 of the ECHR, but does not set out the framework provided by Article 8 (the right to private and family life) and the test which must be met to ensure legislation is compatible with its provisions. Article 8 (2) provides, in summary that interference in private and family life is permitted

<sup>1</sup> *R (F and Thompson) v Secretary of State for the Home Department* [2010] UKSC 17.

<sup>2</sup> In addition to the European Convention on Human Rights there are a range of other international standards, which should be considered in this process, including the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* and the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. There is a specific need here to protect children, and thus engage with Articles 3 and 19 of the *UN Convention on the Rights of the Child*.

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2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)



when it is adequately set out in law and is a proportionate to achieving one or more of the legitimate aims set out in the Article.<sup>3</sup> As set out in the Supreme Court judgement, the European Court of Human Rights in a separate case had already held that the notification requirements under the Sexual Offences Act 2003 did engage Article 8, were adequately set out in law and did pursue two of the legitimate aims namely the prevention of crime and the protection of the rights of others.<sup>4</sup> The issue before the court was therefore whether it was proportionate to apply the indefinite notification requirement to everyone who had a sentence of over 30 months. The Supreme Court reviewed the evidence and held that this was disproportionate.

In general measures can be found to be disproportionate when they are effectively arbitrary, i.e. when they are applied indiscriminately and in a blanket fashion, without allowing the opportunity to take into account different circumstances. In relation to assessing whether the present proposals meet this test, there are some aspects where further clarity would be beneficial. For instance, it is not clear on what basis it was decided that an application for the review of the notification requirements will only take place 15 years after an individual has been released from prison. There is also no evidence base provided (other than it is 'in line with proposals for England and Wales'<sup>5</sup>) as to why 8 years was chosen as the time period which must elapse before a further review can occur (the Assembly having initially considered five years.<sup>6</sup>) Similarly, it is unclear why 8 years was chosen as the timeframe deemed appropriate for an application of the review requirements for those who were under 18 at the time of conviction, nor on the circumstances in which the police can extend the period before a person can re-apply from 8 years up to 15 years. If the Department has arrived at these time periods for good reasons based on empirical data, this is not clear from the consultation. Further clarity on the thinking behind these elements of the proposals would therefore be welcome. If the Department does not have an evidence base for these proposals, CAJ would urge the examination of human rights compliant comparative data to this end.

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<sup>3</sup> The full text of Article 8 ECHR is: "1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

<sup>4</sup> Paragraph 27 of judgement citing *Adamson v United Kingdom* (1999) 28 EHRR CD 209.

<sup>5</sup> Para. 3. 22

<sup>6</sup> Para. 3. 22

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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There does appear to be an underlying assumption in the proposals that the imprisonment of persons for sexual offences does not serve any rehabilitative or reformatory purpose. Prison functions as both a method of protecting the public and rehabilitating individuals. There is a need to strike an appropriate balance between genuinely protecting the public and not unduly placing measures on individuals who have served their sentences and have been rehabilitated when there is no real public protection purpose in doing so. If the balance is not struck and far-reaching measures are applied, in practice, for no good reason, they risk losing legitimacy. CAJ requests that if the Department is relying upon data which suggests that there is a high rate of recidivism amongst persons convicted of sexual offences as a justification for its proposals, that such data be shared as part of the consultation.

CAJ would also urge consideration of a tiered or risk-assessment driven approach which, where relevant, takes into account the particular circumstances of individual cases and tailors appropriate measures accordingly. Blanket measures engage the test of proportionality. CAJ recognises that all sexual offences are inherently serious crimes but clearly an offence leading to a sentence of 10 years is even more serious than an offence that led to a sentence of 30 months. The courts already follow such an approach when sentencing, considering a number of factors, such as the circumstances surrounding the commission of the offence and the persons own previous criminal record. This allows the court to differentiate and pass what it considers to be an appropriate sentence in the circumstances of the case. Given that such differences play an important role in defining sentencing, they should also be considered in the operation of this scheme.

The proposals set out that the review of whether a person convicted of a sexual offence is still a risk to the public will be conducted by the PSNI, but that there will effectively be a right of 'appeal' to the Crown Court. This is important to, as noted in the consultation paper, meet any requirements under Article 6 ECHR for a fair trial by an independent and impartial tribunal. Further clarity would however be welcome as to the practical details of this mechanism including:

- Whether the Crown Court will be able to review how the police made their decision or whether proceedings will simply be limited to reapplying the same test?
- Will the applicant still have recourse to judicial review should the decision not be successfully appealed?

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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- Whether the Department envisages legal aid being made available for this process?

**Proposal: Change the law to allow the removal of persons from the register who were historically convicted of offences which are no longer crimes**

The proposals would change the law to allow the removal of persons from the register who were historically convicted of offences that are no longer crimes. This would include those persons who had consensual sex with another person aged 16 or over. This proposal is in light of the age of consent having previously been higher and no consequential amendment having been made to an existing procedure which allows men previously convicted under nineteenth century legislation criminalising homosexuality an exemption from registration.<sup>7</sup> CAJ welcomes this proposal.

In relation to the procedure itself (under schedule 4 of Sexual Offences Act 2003) CAJ would urge further consideration of whether it is right for the onus to be placed upon the individual to have to apply to have the notification requirements removed, rather than their removal by an automatic review by the relevant authorities. Given that the removal of the notification requirement is as a result of a change in legislation, this may be more appropriate.

On a related matter, CAJ notes proposals (for England and Wales) contained in the Protection of Freedoms Bill currently progressing through Westminster which provide that historical criminal convictions or cautions under legislation which criminalised homosexuality between consenting males can be disregarded upon application to the Secretary of State.<sup>8</sup> If the Secretary of State decides that such a conviction should be disregarded, it is deleted from relevant records.<sup>9</sup> A person who has a disregarded conviction or caution is then to be treated for all purposes in law as if the person has not committed an offence, been charged with, or prosecuted for an offence, been convicted of an offence, been sentenced for an offence, or been cautioned for an offence.<sup>10</sup> CAJ would urge consideration of introducing a similar provision for Northern Ireland should there be persons in similar circumstances in this jurisdiction.<sup>11</sup> As highlighted above, consideration

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<sup>7</sup> In schedule 4 of the Sexual Offence Act 2003 referring to section 61 of the Offences against the Person Act 1861 (c. 100) or section 11 of the Criminal Law Amendment Act 1885.

<sup>8</sup> Protection of Freedoms Bill (as amended in Public Bill Committee), clause 88,

<sup>9</sup> As above, clause 91

<sup>10</sup> As above, clause 92

<sup>11</sup> It was not until after the judgment of the European Court of Human Rights in *Dudgeon v. United Kingdom* [1983] ECHR 7525/76 that male homosexuality was decriminalised in Northern Ireland.

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2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)



should be given in such circumstances as to whether the onus should be on the individual to have to apply to have a conviction disregarded.

### **Proposals: changes to notification requirements in relation to persons convicted of sex offences**

#### **Notification of foreign travel**

The proposal would either require all persons on the register to notify at a police station of all travel outside the UK (including to the Republic of Ireland) or alternatively to do so if the period of travel is for more than 2 days, for which the latter option is preferred. There is also a proposal for a mechanism to notify of a recurring commitment to travel for employment or family connections. At present there is an existing requirement to notify travel of more than three days.

CAJ acknowledges the difficulties in tracking persons on the register and the particular issues which can occur in relation to travel outside the jurisdiction. We also note the practical difficulties that would be faced by the PSNI if persons convicted of sexual offences in Northern Ireland were required to report every time they wished to cross the border into the Republic of Ireland. In relation to the 2 day stipulation, again it is not clear as to what the evidence base was which led to this proposal becoming the preferred option and hence what actual benefit would be offered by reducing the time period for which notification is required from 3 to 2 days. It is not clear also whether other or complementary measures have been considered to increase cooperation between the relevant authorities in the constituent parts of the 'Common Travel Area' (the UK, Ireland, Isle of Man and Channel Islands) relating to this measure, or if there is broader tie-in to evolving international human rights developments. In relation to the second proposal, CAJ would suggest that the phrase 'recurring commitment' is further teased out to help to avoid any ambiguity or uncertainty in the operation of the requirement.

#### **Arrangements to require offenders to notify weekly of where they can be found if they have no fixed abode**

The proposal means a person who is homeless or otherwise has no fixed address would need to tell the police every week, rather than annually (or when a change occurred) where they can be regularly found.

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Although this case notes that from 1972-1980 no private prosecutions were brought there may have been convictions relating to other periods.

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2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)



The difficulties faced by the police in relation to the enforcement of notification for those who are homeless or without a fixed address have been set out. This proposal however does not address the underlying issue of homelessness which may occur on release from prison. It would be beneficial to include within this measure a more holistic approach to the issue, for instance, a commitment to work with the Probation Service, Housing Executive and Housing Associations and all other relevant agencies. This approach would also have benefit from the perspective of public protection, as if more appropriate services are provided to homeless persons convicted of sexual offences then it will be easier for the PSNI to conduct monitoring.

**Arrangements to require offenders to notify if they are living in a household where there is a child under 18**

This proposal would require a person on the register to notify police of any time they are staying in a house where there is also a child.

The Department regards the proposal as a 'proportionate step to protect those children who may be at risk of serious harm' and argues that that the additional requirement would 'add very little burden, either to sex offenders or to police forces'.<sup>12</sup> However whilst it appears relatively straightforward for this type of information to be provided within the standard change of address notifications, it is less clear what will happen in situations where children are subsequently present at a property (temporarily or otherwise) and the person convicted of a sexual offence was unaware of this fact at the time of notification. In these circumstances this could constitute a considerable additional undertaking, particularly if there is a blanket requirement rather than a tiered risk assessed approach based on the particular circumstance (e.g. if the original offence involved children). What is also not set out is how the PSNI would use this information and how they would be able to protect vulnerable children in this way. For instance, it is not clear if the PSNI would inform the householder that the individual was a person convicted of a sexual offence and how the potential repercussions of this would be handled. Further consideration should therefore be given to the rationale behind this proposal, its detail and how the proposal would operate in practice. Finally, to afford legal certainty, it would be beneficial for the terms 'reside' and 'stay' to be defined in relation to both children and the person convicted of a sexual offence.

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<sup>12</sup> Para. 7.2.



### Offenders to notify additional information to police

This proposal would require persons to give the police details of passports, bank accounts and credit cards and to produce some identification at every notification visit. There are therefore data protection implications for the police with regard to the storage, use and eventual destruction of this information. The objectives of this proposal are:

- to use the data to help trace offenders;
- to use bank and credit card details in investigations regarding accessing indecent images.

In relation to the proposals relating to bank account and credit card details, the effectiveness and hence proportionality of introducing a blanket requirement (rather than risk assessed provision) deserves further examination. In exploring the full implications of the proposals, further clarity on the circumstances in which police will be able to access and monitor bank and credit card accounts would be helpful. CAJ also believes that in practical terms the details of any assessment of the risk of this requirement being counterproductive would be helpful.<sup>13</sup>

CAJ has no objection *per se* to persons having to produce their identification documents at every notification visit. However not all persons possess the forms of ID which are routinely requested such as passports and driving licences. Such forms of ID can be expensive and complex to obtain although there are alternatives for many persons, such as the electoral identity card. However there will be categories of persons, for example those who are homeless, who would have difficulty in obtaining most forms of ID. In specifying the forms of acceptable identification for this new requirement, care will need to be taken not to unduly restrict the forms of identification which will be acceptable, nor to place a requirement which marginalised individuals are unlikely to meet. A circumstance whereby an individual commits an offence for not having a form of identification, which they have no reasonable prospect of obtaining, needs to be avoided.

<sup>13</sup> Relating to the risk that offenders will not declare credit cards or may seek to purchase indecent images in other ways upon becoming aware that such a card is now being surveyed by the police.



### **Extension of Sexual Offences Prevention Order (SOPO) provisions to include positive actions not just prohibitive conditions**

The proposal would allow the courts, through a SOPO, to require a sex offender to take some specified action to help protect the public. Presently a SOPO can *prohibit* an offender from doing something (e.g. owning a computer) but not *require* them to do something (e.g. attend a rehabilitation programme). CAJ acknowledges that the addition of required positive actions to SOPO could assist in the rehabilitation process of a person convicted of a sexual offence. However proportionality questions are likely to arise with regards to some positive measures, such as a requirement to reside in a particular house, which should be reflected in the framework. It is important that the development of options is done in conjunction with the Probation Service, ensuring that the measures devised are both proportionate and productive.

### **Offenders to notify all details of travel within the UK**

This proposal would require notification of travel within the UK of more than three days. Whilst CAJ can envisage circumstances whereby such a requirement could be justified, there are proportionality questions as to whether it is necessary to introduce a blanket requirement. An alternative would be to apply the measure only to those who the police reasonably believe pose a significant risk. Further information could be given on the evidence base for this proposal and whether there will be a differentiation between travel within Northern Ireland and travel to Great Britain (and hence to other police service areas.)

### **Proposal: Introduce the Violent Offender Order (VOO)**

This proposal would allow the courts to make a VOO, placing conditions on the behaviour of a violent offender in the community to help manage the risk that person poses to the public. A VOO would impose similar notification requirements as those placed on sexual offenders on violent offenders.

CAJ has concerns regarding this proposal and how it would interact with the current sentencing arrangements in relation to persons convicted of violent offences, many of whom will be released from prison on licence. A period spent on licence is a period where the person convicted of an offence is released from custody, subject to certain conditions, such as supervision by the Probation Service. The person released is under a duty to abide by the conditions of the licence.<sup>14</sup> The proposal describes

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<sup>14</sup> Criminal Justice (Northern Ireland) Order 2008, art. 27



how in England and Wales, VOOs are used to place restrictions on those offenders who continue to pose a risk of serious violent harm to the public even after their release from prison and when their licence period has expired. The rationale behind these orders may not pay due regard therefore to the idea that efforts should be made to rehabilitate violent offenders before their licence period has expired, minimizing the risk of serious violent harm. CAJ notes that VOOs can only come into force in England and Wales once statutory licence conditions in relation to an offence have expired. However, the consultation states that 'key stakeholders within the criminal justice system'<sup>15</sup> have requested that VOOs in Northern Ireland should instead come into effect when the offender leaves prison. The need for this is questionable, given that as highlighted above, violent offenders may already be subject to licence requirements when they leave prison.

The Criminal Justice (Northern Ireland) Order 2008 provides for the imposition of life sentences, indeterminate custodial sentences and extended custodial sentences in respect of persons convicted of violent offences. When persons convicted of violent offences are released from custody under these provisions, they are released on licence. Such licences generally contain standard conditions such as those set out in the Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009. Examples of these conditions are that the offender must not behave in a way which undermines the purposes of their release on licence, which are the protection of the public, the prevention of re-offending and the rehabilitation of the offender. The offender is also subject to the conditions not to commit any offence, to reside at an address approved by their probation officer and not to change address without the permission of their probation officer. They cannot travel outside of the United Kingdom, the Channel Islands or the Isle of Man without the permission of their probation officer.<sup>16</sup> Licences can also contain further special conditions such as restricting the contact the person who is subject to the licence can have with other persons, imposing a curfew upon the offender or restricting their freedom of movement.<sup>17</sup> The 2008 Order also provides that an electronic monitoring requirement can be imposed as a condition of release on licence.<sup>18</sup> Licences therefore can already impose similar restrictions as those which are suggested in the proposal. Licences can be revoked and the person convicted of a violent offence can be recalled to serve the rest of their sentence, presumably if it is concluded that the person released on licence still poses a risk to the public.<sup>19</sup>

<sup>15</sup> Para. 12. 10.

<sup>16</sup> Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009, r. 2

<sup>17</sup> Criminal Justice (Sentencing) (Licence Conditions) (Northern Ireland) Rules 2009, r. 3

<sup>18</sup> Criminal Justice (Northern Ireland) Order 2008, art. 35

<sup>19</sup> Criminal Justice (Northern Ireland) Order 2008, art. 28



Where a life sentence is imposed on a person convicted of a violent offence, the licence applies upon their release for the rest of their life.<sup>20</sup> Where an indeterminate custodial sentence is imposed on a person convicted of a violent offence, the licence conditions apply for the rest of that person's life, unless the Parole Commissioners direct the licence to cease once the person has been at liberty for at least ten years.<sup>21</sup> Where the offender is serving an extended custodial sentence, the sentencing judge imposes a period for the offender to spend on licence, which can be up to five years.<sup>22</sup> Given that a person convicted of a violent offence may already be subject to these licence conditions, CAJ questions the need for a measure such as a VOO to also be imposed.

CAJ would also have concerns that a VOO could be employed to effectively extend the period a person is subject to their licence requirements, without paying due regard to the discretion exercised by the sentencing judge. If there are concerns regarding sentencing and the length of licence periods that are being set by the judiciary, they should be addressed directly, rather than indirectly by the proposed measure. VOOs have the potential to lead to uncertainty and ambiguity as to what restrictions are placed on a person's right to liberty once they are released from prison.

CAJ believes that further clarification is also required regarding the procedure by which a VOO could be applied for. The proposal outlines how in England and Wales a VOO is a civil preventative sanction, applied for in the Magistrates Court by the police. In England and Wales, breach of the order is a criminal offence, which attracts a maximum penalty of 5 years imprisonment. However, no detail is provided regarding what the court has to be satisfied of before a VOO can be made, on whom the onus of proof lies in showing that a VOO is or is not necessary, nor on whether the relevant standard of proof in proceedings where a VOO is sought will be the civil standard of the balance of probabilities or the criminal standard of proof beyond a reasonable doubt. If, as is the case in England and Wales, a civil order is applied for with a criminal sanction attached if the order is breached, this could raise concerns regarding the right to a fair trial under Article 6 of the ECHR, if the standard of proof required is the civil standard. In *R (McCann) v. Crown Court at Manchester*<sup>23</sup> the House of Lords held that in civil proceedings where an anti-social behaviour order was sought (the breach of which was also a criminal offence punishable by five years imprisonment) there were good reasons, in the interests of fairness, for applying the

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<sup>20</sup> Life Sentences (Northern Ireland) Order 2001, art. 8

<sup>21</sup> Criminal Justice (Northern Ireland) Order 2008, art. 22

<sup>22</sup> Criminal Justice (Northern Ireland) Order 2008, art. 14

<sup>23</sup> *R (McCann) v. Crown Court at Manchester* [2002] 4 All E.R. 593

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)





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higher standard of proof beyond a reasonable doubt when allegations were made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they were made.

Further, if a VOO is sought on the basis that a person continues to pose a risk of serious violent harm to the public, no detail is provided in the proposal as to how this level of future risk would be assessed. It should also be remembered that the Parole Commissioners do not direct the release of persons convicted of violent offences serving life, indeterminate or extended custodial sentences on licence, unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that the person should be confined.<sup>24</sup> In circumstances where the Parole Commissioners have determined that the person can be released on licence, it would seem incongruous to then apply to the court for a VOO on the basis that the person continues to pose a risk of serious violent harm to the public. Further clarification is therefore required regarding in what circumstances an application for a VOO would be made, how such proceedings would be conducted, whether the person against whom the order is made would have a mechanism to appeal against the making of the order and how the rights of the accused to a fair trial would be guaranteed. Consideration should also be given as to how the imposition of a VOO would interact with the current functions of the Parole Commissioners.

CAJ would also have concerns regarding the potential compatibility of VOOs with Article 7 of the ECHR. Article 7 prohibits the use of punishment without law, and provides that a heavier penalty shall not be imposed on a person for a criminal offence than then one that was applicable at the time the criminal offence was committed. The proposal describes how in England and Wales, VOOs are civil, preventative orders 'which can place restrictions on offenders who continue to pose a risk of serious violent harm, by prohibiting behaviour in a limited number of areas: their access to certain places, premises, events or people to whom they pose the highest risk'.<sup>25</sup> Whilst described as civil orders, the potential for VOOs to restrict an individual's liberty and the imposition of a criminal sanction for breach of the order could lead to the argument that VOOs themselves are a criminal sanction. This in turn could lead to the argument that a VOO imposes a heavier penalty than what was applicable at the time the criminal offence was committed, which could be considered to be a breach of Article 7.

<sup>24</sup> The Life Sentences (Northern Ireland) Order 2001, art. 6 applies in relation to the release of life sentence prisoners on licence. The Criminal Justice (Northern Ireland) Order 2008, art. 18 applies in relation to the release of prisoners serving indeterminate or extended custodial sentences on licence. The release of a person serving an extended custodial sentence must also be directed by the Parole Commissioners when that person has served the whole of the appropriate custodial term.

<sup>25</sup> Para. 12. 5.

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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CAJ also has concerns at the ideas put forward that a VOO should be applied for in relation to a broader range of offences than in England and Wales. The offences for which a VOO can be sought in England and Wales are manslaughter, soliciting murder, wounding with intent to cause grievous bodily harm, malicious wounding and attempt or conspiracy to murder. However, the proposals made by the 'key stakeholders in the criminal justice system' are that the minimum qualifying offence should be set at assault occasioning actual bodily harm, or that a series of multiple offences of a lesser nature should be considered sufficient, which would require lowering the sentencing threshold under which a VOO can be sought. Given that the stated aim of VOOs is to protect the public from a risk of further serious violent harm, it would seem disproportionate to seek the orders more generally against those persons who have not been convicted of causing serious violent harm. Whilst CAJ supports the stated intention behind these proposals, which is to tackle domestic violence, it would be more prudent to consider a specifically tailored legislative measure to do so. CAJ notes that there are already civil remedies in place which aim to protect against domestic violence, such as occupation orders, non-molestation orders or even potentially injunctions under the Protection from Harassment (Northern Ireland) Order 1997. If it is felt that these remedies are ineffective and that reform is needed in this area of the law, legislation should be proposed that is specifically designed to do so, rather than attempting to adapt measures that are not necessarily appropriate for the task.

CAJ would also question whether the aim of VOOs should be to prevent an escalation to serious harm. Violent Offender Orders are imposed in England and Wales after serious violent harm has occurred and are aimed at preventing the risk of further serious violent harm. To impose a similar order on an individual who has been convicted of causing less serious harm would overlook the facts of their individual case, which by their nature meant they were not charged with a more serious violent offence. Widening the criteria under which such orders could be sought could also be viewed as disproportionate.

CAJ believes that further information should be provided on the background to this proposal. For instance, Violent Offender Orders have been an option in England Wales since July 2009, but no information is supplied as to the levels of their success and whether they have made a real and valid contribution to the reduction of violent re-offending. It would also be beneficial to include all of the views of the criminal justice agencies, as outlined at paragraph 12.10, together with the evidence presented by this group. This could assist in understanding why the criminal justice agencies want VOOs to be introduced 'quickly'<sup>26</sup>. It is not clear at present how a

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<sup>26</sup> Para. 12. 11.



VOO could actually help in the prevention of crime and the protection the public. CAJ would welcome clearer and more in-depth information on this aspect of the proposals.

### **Resourcing**

CAJ disagree that these proposals will not have a major resource implication for the PSNI. The increased requirements for reporting and the associated breadth of the reporting will place a burden on the PSNI as they will have to collect, store and act upon this information. There is a risk that the increase in reporting requirements, without the police having the ability or resources to adequately process the data and then take appropriate consequent action will give the illusion of protection without the reality. CAJ would welcome a commitment from the PSNI that they are happy to accept this burden.

### **Equality**

The proposals conclude that no equality issues were identified in the equality screening. However, given the concerns highlighted above that these proposals could be viewed as disproportionate, the true equality impact may only be known once the proposals are implemented in practice. CAJ, as noted above, is concerned that not enough differentiation has been applied between categories of offenders. As a result, these measures may have adverse impacts on different groups.

5<sup>th</sup> October, 2011

2<sup>nd</sup> Floor, Sturgen Building  
9-15 Queen Street  
Belfast BT1 6EA

Tel – 028 9031 6000  
Email – [info@caj.org.uk](mailto:info@caj.org.uk)  
Web – [www.caj.org.uk](http://www.caj.org.uk)

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*CAJ's submission to the*

**Home Office – Policing Powers and Protection Unit re**  
*Keeping the Right People on the DNA Database*

**July 2009**

**Submission No. S.239**  
**Price: £1.50**

**Submission No. S.239**  
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45/47 Donegall Street, Belfast,  
BT1 2BR  
[www.caj.org.uk](http://www.caj.org.uk)  
Tel: (028) 90961122  
Fax: (028) 90246706  
Email: [info@caj.org.uk](mailto:info@caj.org.uk)



The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

**Committee on the Administration of Justice (CAJ) Ltd**

45/47 Donegall Street, BELFAST BT1 2BR  
Northern Ireland

Tel: (00 44 (0) 28 9096 1122 Fax: (00 44 (0) 28 9024 6706  
Email: [info@caj.org.uk](mailto:info@caj.org.uk) Web: [www.caj.org.uk](http://www.caj.org.uk)

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*Winner of the Council of Europe Human Rights Prize*



Alan Brown  
DNA Consultation  
Home Office  
Policing Powers and Protection Unit  
4<sup>th</sup> Floor Peel NW  
2 Marsham Street  
London  
SW1P 4DF

[DNAconsultation@homeoffice.gsi.gov.uk](mailto:DNAconsultation@homeoffice.gsi.gov.uk)

Cc: [policepowers@nio.gsi.gov.uk](mailto:policepowers@nio.gsi.gov.uk)

28 July 2009

**Re: Keeping the Right People on the DNA Database**

Thank you for your letter of 7 May 2009 inviting the Committee on the Administration of Justice (CAJ) to present our views on the proposals made in the **Keeping the Right People on the DNA Database** document. As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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**Devolution of Policing and Justice Issues in Northern Ireland**

**The Committee on the Administration of Justice believes that any changes to the law dealing with the retention of DNA profiles and samples should be left until after the anticipated devolution of policing and justice powers which would allow for greater attention and analysis by local ministers and law makers.**

Having said that we offer the following comments about the proposals:

### General Comments

CAJ commends the Government for its intention to revise its policy on the retention of DNA and fingerprint data. **We particularly applaud the proposal to destroy all samples taken from suspects.**

However, we do not think that the proposed revisions go far enough. We recommend that Northern Ireland follow the example of Scotland in relation to DNA data retention as the law there is significantly different from that in England, Wales and Northern Ireland, and indeed is different from the proposals in the public consultation document.

### Specific Comments

Bearing in mind the judgment of the European Court of Human Rights (ECtHR) in the *S. and Marper* case CAJ remains particularly concerned about the following aspects of the proposals:

- The consultation document proposes (section 2.4) that ‘adults convicted of a recordable offence will have their profiles retained indefinitely’. It is necessary to bear in mind that while ‘recordable offences’ includes violent acts such as murder and manslaughter, ‘recordable offences’ also includes poaching, begging and ‘taking or riding a pedal cycle without owner’s consent’. That the DNA profile of an individual who is convicted of trespassing in search of game should be retained indefinitely seems at odds with the intention of maximising public protection. **CAJ suggests that the DNA profile of those convicted of only the gravest crimes, such as serious violent or sexual offences, should be retained indefinitely, although CAJ believes that consideration should be given to reducing the length of time for keeping DNA profiles of those who have been convicted.**
- The retention of the DNA profile of innocent adults for up to 12 years (determined by the crime for which they were *not* convicted - section 2.4) is clearly **at odds with the presumption of innocence** (Universal Declaration of Human Rights article 11(1)). Even the title of the consultation document *Keeping the Right People on the DNA Database* implies that those individuals on the database are guilty; that the ‘right people’ (ie those on the database) are guilty people.
- The ECtHR judgment, which cites a report by the Nuffield Council on Bioethics,<sup>1</sup> concludes that the capacity of DNA profiles ‘to provide a means of identifying genetic relationships between individuals is in itself sufficient to conclude that their retention interferes with the right to the private life of the individuals concerned’. The judgement states that the Nuffield report ‘also expressed concerns at the increasing use of the DNA data for familial searching, inferring ethnicity and non-operational research. Familial searching is the process of comparing a DNA profile from a crime scene with profiles

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<sup>1</sup> Nuffield Council on Bioethics Report: “The forensic use of bio-information: ethical issues”.  
<http://www.nuffieldbioethics.org/>

stored on the national database, and prioritising them in terms of “closeness” to a match. This allowed identifying possible genetic relatives of an offender. Familial searching might thus lead to revealing previously unknown or concealed genetic relationships.’ **The potential violation of the right to respect for private life remains relevant.**

- **The proposal (section 2.4) to retain the DNA profile of all children under the age of 18 who have been arrested but not convicted of a ‘serious violent or sexual or terrorism-related offence’ for twelve years is unacceptable.** As mentioned above in relation to adults, this is clearly at odds with the presumption of innocence which is a tenet of common law. This right is specifically guaranteed for children by article 40(2)(b)(i) of the *UN Convention on the Rights of the Child (CRC)*. The *CRC* also guarantees that any child accused of having committed a crime shall be ‘treated in a manner consistent with the promotion of the child’s sense of dignity and worth’ (article 40(1)). Retaining DNA profiles for those who have not been convicted stigmatises them and paints them with the same brush as those convicted of committing crime. Whether or not the Government agrees that such a stigma could be the outcome of DNA retention, the ECtHR judgement noted that the applicant (S.) ‘emphasised, finally, that retention of the records cast suspicion on persons who had been acquitted or discharged of crimes, thus implying that they were not wholly innocent.’ Subsequently, the ECtHR concluded that ‘the retention thus resulted in stigma which was particularly detrimental to children as in the case of S. and to members of certain ethnic groups over-represented on the database’. Moreover, it would appear that the proposals are not in the best interest of individual children and therefore contravene article 3 of the *CRC* which states that, ‘in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’. **Retaining forensic data of children requires that due attention is paid to children’s rights and that relevant legislation is in observance of international standards.**
- The statement (section 2.8): ‘We have selected the retention periods of 6 years and 12 years based on the likelihood of people who have been arrested and not convicted but who may go on to commit an offence’ seems to imply that those who are not convicted are nonetheless guilty or that they are likely to commit a crime.
- The statement (section 4.5): ‘the majority of the active criminal population is now believed to have its DNA recorded and police forces use DNA profiles to solve thousands of cases every year’ is misleading and does little but raise expectations of victims and family members of victims which may or may not be fulfilled. The Nuffield Council on Bioethics and GeneWatch UK, two institutions with significant knowledge of the scientific aspect of this debate, have been sceptical in relation to the benefit of wide-spread retaining of DNA profiles. As was cited in the judgment in the S. and Marper case, the Nuffield report ‘referred in particular to the lack of satisfactory empirical evidence to justify the present practice of retaining indefinitely fingerprints, samples and DNA profiles from all those arrested for a recordable offence, irrespective of



whether they were subsequently charged or convicted'. GeneWatch UK and a coalition of other organisations have launched a new website which attempts to debunk myths about the National Database. Significantly, one myth is that 'Keeping more people's records on the DNA database will make it more effective'. In fact, research suggests that 'keeping DNA profiles from convicted criminals has been shown to be effective, as has collecting more DNA from crime scenes. But keeping DNA profiles from unconvicted people on the Database has not helped to solve more crimes: the proportion of recorded crimes detected using DNA has not increased in the last 5 years, despite 2 million more people's records being kept'.<sup>2</sup>

- **CAJ opposes the proposal (section 8.6) to abolish the provision within PACE which allows a person to request to witness the destruction of his or her fingerprints.**

**CAJ holds that negative implications of retaining DNA profiles, which raises questions in relation to the proportionality and necessity requirement under the *European Convention on Human Rights* (article 8), outweigh the benefit of possibly increasing public safety.** Again, we would hope that the Home Office and the NIO would look to the Scottish system which balances individual rights and public safety in relation to destroying records of forensic data.

Thank you again for permitting CAJ to submit our views and we look forward to seeing the Home Office and NIO analysis of the consultation submissions.

Yours Sincerely,

Jacqueline Monahan  
Criminal Justice Programme Officer

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<sup>2</sup> <http://reclaimyourdna.org/further-information/ten-myths-about-the-national-dna-database/>

# Disability Action

## Written evidence on the Criminal Justice Bill to the Committee for Justice

### Introduction

- 1 Disability Action is a pioneering Northern Ireland charity working with and for people with disabilities. We work with our members to provide information, training, transport, employment, mobility awareness programmes and to represent people regardless of their disability; whether that is physical, mental, sensory, hidden or learning disability.
- 2 21% of adults and 6% of children living in private households in Northern Ireland have a disability and the incidence is one of the highest in the United Kingdom.
- 3 As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community. In pursuit of our aims we serve 45,000 people each year.
- 4 Our network of services is provided via our Headquarters in Belfast and in three regional offices in Carrickfergus, Derry and Dungannon.
- 5 Disability Action welcomes the opportunity to submit written evidence on behalf of this Bill.

### General Comments

- 6 Disability Action welcomes the strengthening of the protection against trafficking contained in the Bill, however other matters need addressed including allowing the courts to take aggravating factors including the disability of the victim into consideration when passing sentence, extending the definition of exploitation to include forced begging, improving the training and investigative tools for police and prosecutors and to provide better support for victims as proposed in the consultation paper<sup>1</sup> on Proposed Changes in the Law to Tackle Human Trafficking.

There is considerable evidence of a growing trend for the trafficking of people with disabilities for exploitation in Asia and the Middle East with reported incidents in Great Britain.<sup>2</sup> Despite recent reports on trafficking in Northern Ireland there is little available evidence on the extent of the problem of the trafficking of disabled people as disaggregated data is not available. This is a common problem in many states, leading some commentators to call disabled people, “the forgotten people of modern day slavery”.<sup>3</sup>

- 6.1 Research carried out by the Institute for Conflict Research in 2009, commented that the system of data collection on trafficking in Northern Ireland was “virtually nonexistent”.<sup>4</sup> The report recommended that, “the Northern Ireland Office should begin a wide-scale consultation with all relevant departments and organisations, including non-governmental organisations, on how data should be collected, stored and made available for assessment.”<sup>5</sup> Disability Action is not aware of any action on this matter with regard to people with disabilities.

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1 <http://www.care.org.uk/wp-content/uploads/2012/08/PROPOSED-CHANGES-IN-THE-LAW-TO-TACKLE-HUMAN-TRAFFICKING.pdf> Lord Morrow August 2012

2 Inquiry into Human Trafficking in Scotland. Report of the Equality and Human Rights Commission Feb 2010 see [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

3 <http://www.traffickingproject.org/2010/09/forgotten-people-of-modern-day-slavery.html>

4 <http://www.equalityni.org/archive/pdf/ECNIHRCtraffickingReport.pdf> page 7 (website last accessed in August 2012)

5 Ibid page (website last accessed in August 2012)

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- 6.2 The Assembly research paper on trafficking commented that only the PSNI rescues trafficking victims in Northern Ireland, whereas both UKBA and the Gangmasters Licencing Authority (GLA) could have the capacity to do so, if given the remit and training. It was also suggested that the powers of the GLA be extended to all parts of the economy. In addition, “data sharing and the availability of data were raised as issues”.<sup>6</sup>
- 6.3 It is unknown how many of the 75 individuals who are reported to have been rescued from trafficking by the PSNI since 2009/10 were disabled or what support has been given to them with regards to any disability.
- 6.4 Disability Action would urge the Justice Committee to call for better statistics and information on the extent of the problem of the trafficking of disabled people in Northern Ireland.
7. While the explanatory and financial memorandum and the consultation responses were available, Disability Action believe that the earlier availability of the Bill paper which was published on the 31 August 2012, the date for the finish of the consultation.<sup>7</sup> would have better informed the responses from the consultees.

### **Specific Comments on the measures contained in the Bill**

- 8 Schedule 1 (paragraph 6)

Schedule 1 (6) states that, **“an application under this paragraph must be in writing”** (page 10). Disability Action comments that the United Nation Convention on the Rights of Persons with Disabilities (UNCRPD) of which the UK is a signatory, notes in Article 21(b) that states agree to;

“(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;”

and under Article 4 1(a);

“(a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention”.<sup>8</sup>

Disability Action also notes that the form of communication by the State parties is not prescribed in the proposed Bill, for example in paragraph 7; the **“Chief Constable must, within 14 days of the receipt of any application, under this paragraph, give an acknowledgement of the receipt of the application to the offender”**.

Disability Action would suggest a different form of words to reflect the comments of the UNCRPD while maintaining the needs for records to be maintained such as, **“an application under this paragraph must include ...”** would provide the details required without being prescriptive about the communication method used.

- 8.1 The comments also apply to Schedule 2, paragraph 63J (3a) in which again consent must be given in writing.

- 9 Schedule 1 (paragraph 2A iii)

**“in respect of which the offender was found to be under a disability and to have done the act charged”**

6 <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/ofmdfm/10012.pdf>, page 29 (website last accessed in August 2012)

7 <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/justice/12312.pdf> (website accessed in August 2012)

8 <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> (website accessed in August 2012)

This Bill paragraph refers to matters the Chief Constable must take into account when considering discharging the notification requirements under Part 2 of the Act, in ending the notification requirements.

It is unclear from the Act and from the information on the clauses in the Bill paper<sup>9</sup> why the undefined term disability has been specifically included as a grounds for the Chief Constable to consider. Disability Action would comment that unless disability on the part of the offender was part of the original offence, then matters in relation to capacity at the time of the offence can be adequately dealt with under paragraph 2(L) in the Bill;

**“Any information presented by or on behalf of the offender”.**

To include disability as a specific mitigation measure without further definition does unfortunately link disability with offending and unless there are specific reasons for its inclusion, Disability Action suggests that paragraph 2(iii) is removed.

10 DNA and Fingerprints

There is a great deal of evidence that there are high levels of disability amongst prisoners and young offenders. For example, work undertaken by the Police Authority for Northern Ireland and the Police Ombudsman on people with learning disability reported that the proportion of people with a learning disability convicted of crime is higher than the general population.<sup>10</sup>

Disability Action is not aware of any study which has examined the offending patterns of people with disabilities, but from the evidence on youth offending (i.e. that young people commit a number of minor offences) it seems logical that people with disabilities will be affected to a greater extent than the general population in relation to the gathering and retention of DNA and Fingerprints.

In the absence of definitive evidence on this matter, Disability Action is unable to make comments on the affect of the provisions of the Bill in relation to DNA and Fingerprints with regard to disabled people other than in relation to procedures.

Disability Action would comment that information in relation the taking, retention and disposal of fingerprints and DNA must be fully accessible to ensure that people with disabilities are not disadvantaged and that they are fully aware of the effects of the system. This will involve the monitoring of outcomes in relation to the number of people with disabilities requesting disposal of their DNA and fingerprints compared to the general population and consideration given to the formats used in the notification processes.

- 10.1 Disability Action welcomes the clear commitment in the Bill that DNA and fingerprints will only be used for the purposes related to the prevention or detection of crime (Schedule 2, paragraph 63N page 21).

**Conclusion**

- 11 Disability Action has welcomed the opportunity to make a submission. Disability Action looks forward to continued dialogue on this and other issues of major significance to people with disabilities throughout Northern Ireland.

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9 <http://www.niassembly.gov.uk/Documents/RaISe/Publications/2012/justice/12312.pdf> Pages 40-41

10 [http://www.nipolicingboard.org.uk/learning\\_disability\\_research\\_final\\_report.pdf](http://www.nipolicingboard.org.uk/learning_disability_research_final_report.pdf) Page 5 (website accessed in August 2012)

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## Dr Linda Moore, Lecturer of Criminology, School of Criminology, Politics and Social Policy, University of Ulster

Dear Committee Clerk,

### **Re Criminal Justice Bill**

I am writing to the Committee for Justice in response to the invitation for submissions regarding the Criminal Justice Bill and to raise significant concerns about several aspects of the Bill, in particular the provisions regarding the long-term, and sometimes indefinite, retention of children's fingerprints or DNA, where children are convicted only of minor offences, or in cases when they are not convicted but have previous convictions for minor offending. Such powers appear to be disproportionate and a potential breach of children's human rights and civil liberties, for example of Article 8 ECHR (respect for private and family life) and Article 14 (right to the enjoyment of rights and freedoms without discrimination). It is of particular concern that the provisions relate to children as young as 10 years of age.

Research demonstrates that in Northern Ireland, as in other jurisdictions, children and young people are disproportionately likely to come into contact with the police, primarily as a consequence of children's greater use of public space. The Bill therefore has the potential to impact differentially, and negatively, on young people as a group. Moreover the holding of information indefinitely is not in keeping with the rehabilitative ideal, and the possibility of a fresh start in life. This is particularly important in the case of some children and young people who may commit misdemeanours and minor offences in their early years, but through the natural process of maturation later desist from offending. The Bill also is disrespectful to the concept of innocence until guilt is proven.

As the Committee will be aware, the UK government has already been criticised by the United Nations Committee on the Rights of the Child in its 2008 observations report regarding the retention of children's DNA samples. The Committee urged government to afford better protection to children through stronger data protection regulations. The Bill as proposed does not provide adequate protection.

I would anticipate that the leading children's rights organisations in Northern Ireland will be in contact with the Committee raising concerns about this Bill and would urge the Committee to listen to those organisations which work with children and who are concerned about their rights. Our young people in Northern Ireland have been stigmatised and demonised in the past, and many have experienced social disadvantage. It is vital therefore that our political representatives work to ensure their best interests and do not put into place legislation which will further criminalise children and young people for what may be minor offending, and will allow individuals little opportunity to redeem themselves

Yours sincerely

Dr Linda Moore, Lecturer in Criminology, School of Criminology, Politics and  
Social Policy, University of Ulster

**Re. Written submission to Criminal Justice Bill 2012**

Dear Sirs,

Thank you for your correspondence dated 11th July 2012 inviting us to present our views and comments on the Criminal Justice Bill. Our response will concentrate on the issue of human trafficking however we will briefly mention the issues of sex offender notification and the retention of fingerprints and samples.

**Sex offender notification**

In relation to sex offender notification we welcome the implementation of a review mechanism. We see this as reflective of the fact that an individual can change and that no one is beyond redemption. However, in order to protect the vulnerable we would suggest the retention of powers to initially place dangerous individuals on the register for life subject to the review mechanism after a defined period. In every case we would suggest a thorough review by the relevant psychiatric expert before someone is removed from the register. This would mean that individuals are not simply removed from the register after an arbitrary period even when they still present an identifiable threat to others.

**Retention of fingerprints and samples**

Without wishing to comment at length it seems necessary, at the very least, to amend the legislation to ensure that when someone has been acquitted of a crime that their sample and fingerprints are destroyed immediately.

**Human Trafficking provisions - Clause 5**

**1. Proposed sentences**

The two new trafficking offences will be introduced as hybrid offences which can be tried summarily or on indictment. We have concerns over the proposed sentence an offender could receive under summary conviction for either offence.

In the **consultation document** it was proposed that someone found guilty of either offence would be *“liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.”*

However the Bill, if passed in its current form would reduce this to a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum.

**Our concern is that rather than facing a maximum of 12 months in prison and the prospect of a fine, an offender summarily convicted under this Bill would now only face a maximum of 6 months in prison or a fine.** We appreciate that trafficking is a complex offence and those involved will have varying degrees of criminal responsibility. However the fact that someone convicted of a trafficking offence could be given solely a fine seems disproportionately lenient given the gravity of the crimes and human rights abuses concerned.

Director: Peter Lynas  
Evangelical Alliance NI  
Downview house, 440 Shore road  
Newtownabbey, BT37 9RU  
Tel: 028 9029 2266  
Email:n.ireland@eauk.org  
Website: ww.eauk.org/northern-ireland

## 2. **Minimum Sentences**

The Swedish Government has taken a tough approach when it comes to sentencing those convicted of trafficking:-

“Any person who uses coercion or deception, exploits someone else’s vulnerable situation or, by any other such undue or improper means, recruits, transports, houses, receives or takes any such action involving a person, and thereby takes control of that person, with a view to that person being exploited for casual sexual relations or in some other way being exploited for sexual purposes, shall be **sentenced to at least two and at most ten years’ imprisonment** for trafficking in human beings.”<sup>1</sup>

This means that in Sweden the minimum someone would face, on conviction of a sex-trafficking offence, would be 2 years imprisonment. We would suggest that a minimum custodial sentence fixed in legislation, not merely in sentencing guidelines, could be an effective deterrent to those seeking to profit by sex trafficking here. We would suggest that this be coupled with a mandatory period on the sex offenders register for those convicted of any offence related to sex trafficking.

## 3. **Complimentary Sentences**

We would like to see robust measures against human traffickers matched by a consistent policy when dealing with the users. We would encourage debate and consideration of the ‘Swedish model’ as proposed by Lord Morrow’s bill, namely outlawing the purchase of sexual services. Alternatively another approach would be to change the offence of ‘purchasing sexual services from a prostitute subjected to force’ from a summary offence to a hybrid offence. This would give the PPS greater flexibility in terms of timescale, court of prosecution and greater sentencing powers. Again even a relatively short custodial sentence and spell on the sex offenders register could be a very effective deterrent to reduce the demand for sex trafficking.

Please do contact us if you require any clarification of these matters or if we can be of any further assistance.

May God bless,

**David Smyth**

*Public Policy Officer*

*evangelical alliance northern ireland*

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1 “Targeting the sex buyer. The Swedish Example: Stopping Prostitution and Trafficking where it all begins”. [2010] Kajsa Claude and the Swedish Institute, page18, para 6.

# GeneWatch UK

## GeneWatch UK comments on the Northern Ireland Criminal Justice Bill

GeneWatch UK welcomes the opportunity to comment on the aspects of the Criminal Justice Bill which relate to the retention of samples, DNA profiles and fingerprints. We broadly welcome the introduction of the Bill and the protections it introduces for privacy and human rights. However, we have a number of important suggestions for improvement which, if adopted, could establish best practice safeguards for retention of DNA profiles and associated data in Northern Ireland.

### About GeneWatch UK

GeneWatch UK is a not-for-profit organisation which aims to ensure that genetics is used in the public interest and that members of the public have a say about genetic science and technologies. GeneWatch UK published the first report for members of the public about the UK National DNA Database in January 2005. We have since received many queries from people who are concerned about the retention of their own or their children's DNA, fingerprints and associated data in England, Wales and Northern Ireland. GeneWatch's Director provided expert evidence to the applicants in the case of *S. and Marper v. the UK* (European Court of Human Rights) and has supplied both oral and written evidence on this issue to numerous parliamentary committees including the Scottish Parliament's Justice Committee and the Science and Technology, Home Affairs and Constitutional Committees at Westminster, as well as the scrutiny committee for the Protection of Freedoms Bill. GeneWatch UK is now working in partnership with the Council for Responsible Genetics and Privacy International to assist civil society organisations and policy makers in developing best practice human rights safeguards for DNA databases worldwide.

### Background

The Forensic Science Northern Ireland laboratory (FSNI) analyses and stores DNA samples in Northern Ireland on behalf of the Police Service Northern Ireland (PSNI) and manages Northern Ireland's computer database of DNA profiles. It also exports DNA profiles to the National DNA Database (NDNAD) in England.

When the National DNA Database was first set up in 1995, DNA was collected on charge for a relatively small number of serious offences, when relevant to the investigation. DNA profiles and fingerprints were supposed to be deleted at the same time as records on the Police National Computer (PNC), following weeding rules which allowed retention of records for cautions for five years, records for minor offences for ten, and records for serious or multiple offences indefinitely. The indefinite retention of innocent persons' DNA profiles and fingerprints was introduced in 2001 in England, Wales and Northern Ireland (but not Scotland) and weeding rules for the PNC were subsequently abandoned altogether. It is important to note that if DNA database records are retained, PNC records and fingerprints must also be retained to allow tracking of the individual in the event of a match between a crime scene DNA profile and the individual's DNA profile.

The provisions for **collection** of DNA in the UK have subsequently been significantly extended and go way beyond most other countries, allowing routine collection on arrest for any recordable offence, without judicial oversight. Because DNA is typically collected from less than 1% of crime scenes, in most cases the DNA sample taken from the individual will not be relevant to investigation of the specific offence for which they have been arrested. Due to the low age of criminal responsibility at age ten in England, Wales and Northern Ireland, DNA will also be collected from many children accused of very minor offences. Examples of reported cases in England include: a 12-year old-schoolboy arrested for allegedly stealing a pack of Pokemon cards<sup>1</sup>; a grandmother arrested for failing to return a football kicked into her



garden<sup>2</sup>; a ten-year-old victim of bullying who had a false accusation made against her<sup>3</sup>; a 14-year-old girl arrested for allegedly pinning another girl's bra<sup>4</sup>; a 13-year-old who hit a police car with a snowball<sup>5</sup>; a computer technician wrongly accused of being a terrorist<sup>6</sup>; Janet Street-Porter<sup>7</sup>; comedian Mark Thomas<sup>8</sup>; and Conservative MPs Greg Hands and Damian Green.

The section of the Criminal Justice Act 2003 which allows DNA to be taken on arrest, rather than on charge, was introduced via a late amendment submitted by the UK Home Secretary during the first week of the Iraq war: no Northern Ireland MP from any party voted in favour of it.<sup>9</sup> However, the provisions were later applied to Northern Ireland via the Criminal Justice (Northern Ireland) Order 2004, without consultation, whilst the Assembly was suspended.<sup>10</sup>

Following the judgment of the European Court of Human Rights in the *S. and Marper* case in December 2008, the Protection of Freedoms Act 2012 has been adopted in England and Wales, although a commencement order for the DNA provisions has not yet been issued. The Northern Ireland Criminal Justice Bill mirrors many of the same provisions, although the decision to remove provisions allowing indefinite retention of material on national security grounds (via renewable two year periods) is welcome.

DNA profiles collected from individuals in Northern Ireland and Scotland are copied to the National DNA Database in England and retained records will be searchable against any crime scene DNA collected anywhere in the EU under the EU's Prüm Decisions, once these have been implemented (implementation in the UK is delayed pending compliance of the National DNA Database with the European Court of Human Rights' judgment in the *S. and Marper* case).

## Comments on the Criminal Justice Bill: Schedules 2 and 3

### **Destruction of material obtained unlawfully or as a result of unlawful arrests or mistaken identity: 63B(3)(b)**

This provision requires DNA profiles and fingerprints to be destroyed if it "appears to the Chief Constable" that the material was obtained unlawfully or as a result of an unlawful arrest or mistaken identity. Even prior to commencement of the same provision in the Protection of Freedoms Bill in England and Wales, GeneWatch has received a number of calls relating to circumstances where individuals dispute the circumstances of their arrest or collection of their DNA and fingerprints. It is clear that allowing chief constables discretion in this area will be problematic. GeneWatch UK recommends that such determinations are either made by a third party or may be appealed to a third party (such as the Police Ombudsman or Northern Ireland Biometrics Commissioner).

### **Retention and deletion of DNA profiles and fingerprints (63D)**

GeneWatch broadly welcomes the proposed approach to implementing the judgment of the European Court of Human Rights. However, we question whether it is necessary and proportionate: (1) to retain material for three years or more from persons who have merely been arrested and not charged with a qualifying offence; and (2) to retain material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. These issues are addressed in turn below.

In addition, 63C(1) allows retention of material until the "conclusion of the investigation of the offence" or the conclusion of any proceedings. GeneWatch recommends that the wording of this clause is clarified so that individuals who have been ruled out of further inquiries do not have their data retained indefinitely in circumstances where a case is not closed (i.e. when an investigation may be continuing – perhaps for years - but the individual has been eliminated from inquiries).

### Persons arrested for a qualifying offence

Section 18A of the Criminal Procedure (Scotland) Act 1995, as inserted by section 83 of the Police, Public Order and Criminal Justice (Scotland) Act 2006, which was commenced on 1 January 2007, allows retention of DNA profiles and fingerprints for three years in the first instance when *“criminal proceedings in respect of a relevant sexual offence or a relevant violent offence were instituted against the person from whom the sample was taken but those proceedings concluded otherwise than with a conviction or an order under section 246(3) of this Act”*. In the Protection of Freedoms Act, and by extension here, this category of persons has been broadened to include not only those proceeded against for a relevant sexual or violent offence, but all those charged, and some persons arrested, for a qualifying offence. The extension to persons arrested but not charged is particularly problematic because there is no oversight of arrests by individual officers and hence powers of arrest are very broad and open to discriminatory use or misuse. Further, people may be arrested merely on the basis of a false accusation or because they are in the wrong place at the wrong time (for example, witnessing or even trying to stop a crime).

The main purpose of section 83 of the Police, Public Order and Criminal Justice (Scotland) Act 2006 was to address concerns about violence against women, where it is common for proceedings to be dropped due to reluctance of the victim to give evidence or difficulties establishing lack of consent to sexual intercourse. In rare cases, men involved in such cases subsequently commit stranger rapes and in a very small subset of such crimes it is possible that a ‘cold hit’ on the DNA database is the only way to identify the offender as a suspect (if suspects are identified through other means, their DNA can be taken from them on arrest and it is immaterial whether they have a record on the database). However, the number of relevant cases is likely to be very small.

A detailed analysis of the available crime detection statistics and cases is available in GeneWatch UK’s January 2010 submission to the Home Affairs Committee.<sup>11</sup> Based on subsequent additional information from the Home Office, GeneWatch estimates that in 2008/09 fifty-six DNA detections (approximately 28 convictions) in England and Wales were likely to have involved the stored DNA profile of a previously unconvicted person (and therefore could potentially be missed if all innocent people’s profiles were removed from the National DNA Database).<sup>12</sup> The vast majority of these convictions would be for volume crimes and, even if all innocent person’s DNA profiles were removed from the Database, most of the estimated 28 convictions would be delayed not lost since any future re-arrest of the same individual would lead to a match with the relevant stored crime scene DNA profile. In 2008/09 0.98% of DNA detections were for rape and 0.4% for homicide (murder plus manslaughter). This suggests that of the 28 estimated convictions involving unconvicted persons records 0.27 might be for rape (about one every 3 to 4 years) and 0.11 for homicide (about one every ten years). This is probably an overestimate because the proportion of ‘cold hits’ in rape and murder cases is likely to be lower than for volume crimes, due to the fact that most murderers and rapists are known to their victims. This means that perpetrators of these types of crime are more likely to have their DNA taken as ‘known suspects’ rather than being identified using the DNA database. In reality, GeneWatch is not aware of any murder cases that were solved as a result of more than ten years’ retention of innocent persons’ DNA profiles (despite persistent attempts by the police to identify such cases). A very small number of rape cases have been highlighted by the police but the circumstances surrounding most these have been disputed. Northern Ireland’s population is only about 3.2% of that of England and Wales, so assuming similar crime rates and detection rates, it might take a hundred years or more to solve one rape through the retention of all innocent persons’ DNA records and several hundred years to solve one murder.

In view of the low threshold for arrest, the lack of any oversight of police powers of arrest, the potential for false accusations, the expected extreme rarity of relevant solved cases (especially in the small population of Northern Ireland), and the complexity of the retention regime purely for arrests (requiring oversight by the Biometrics Commissioner), GeneWatch suggests that the power to retain material for a three year period (with possible subsequent

extension) is restricted to persons who are charged with a qualifying offence, not extended to those who are merely arrested. This would require the deletion of the words “arrested for, or” in 63D paragraph (1)(a) and the deletion of paragraph (5). This change might also allow the position of Northern Ireland Biometrics Commissioner to be dispensed with altogether, saving money (including the police time that might be spent in making applications).

#### *Convicted and cautioned persons*

The Bill treats persons who have been cautioned as if they are convicted. All adults cautioned or convicted for a single minor offence, and all young persons cautioned or convicted for more than one offence will have their records retained indefinitely. More consideration should be given to whether this is necessary and proportionate.

As noted above, the original rules when the National DNA Database was first set up involved the deletion of records after five years for a caution or ten years for a single minor offence. There has been no debate about abandoning these rules, which happened merely as a matter of police policy. Recordable offences include imprisonable offences plus around fifty other offences including “Taking or riding a pedal cycle without the owner’s consent”.<sup>13</sup> GeneWatch understands that the list of recordable offences is under review but that whatever offences are recordable in future will likely be uploaded to the PNC. If DNA profiles and fingerprints are retained indefinitely it will be necessary to retain the PNC record indefinitely, and information within it will also be available for employment and visa checks, most likely on a UK-wide basis.

In 2010, the Equalities and Human Rights Commission expressed the view that the indefinite retention of all convicted persons’ records is incompatible with the European Convention on Human Rights<sup>1</sup>, and obtained a legal opinion to this effect<sup>2</sup>. The Opinion relies on the wording of The Committee of Ministers’ Recommendation R92(1)<sup>3</sup>, which was referred to in the S. and Marper judgment, and on the need to give due consideration to the rehabilitation of offenders.

In GeneWatch’s view, time limits should be reintroduced for the retention of data from adults convicted or cautioned for a single minor offence and the retention regime for children should also be modified so that conviction or caution for more than one minor offence does not result in indefinite retention of material.

#### **Destruction of copies: 63L(2)**

This provision allows police to retain copies of DNA profiles provided the individual cannot be identified from them: but in practice anonymising DNA profiles may be impossible. In England and Wales, the inclusion in the Protection of Freedoms Act of a similar provision has been contentious and the decision to allow the retention of copies has led to some loss of public trust in the protection provided by the Act. This exception to the requirements for destruction of copies was included because multiple DNA profiles are processed in batches in the laboratories which analyse the biological samples for the police. This gives rise to computerised batch files which contain multiple DNA profiles from a group of persons some of whom will subsequently be convicted of an offence and some of whom will not. Extracting individual profiles from the batch files for deletion is regarded as expensive and unfeasible: however the possibility of changing laboratory processes to avoid this problem is now being explored in England and Wales. It remains unclear why the batch files need to be retained beyond the period necessary for analysis and quality assurance (i.e. the period allowed for retention of biological samples in 63M). In GeneWatch’s view the explanation given by the

1 Equalities and Human Rights Commission (2010) Government’s proposals incompatible with European Convention on Human Rights. Press Release. 5th January 2010. Available on: <http://www.equalityhumanrights.com/media-centre/government-s-proposals-incompatible-with-the-european-convention-on-human-rights>

2 Available on: [http://www.equalityhumanrights.com/uploaded\\_files/counsels\\_advice\\_dna\\_database.pdf](http://www.equalityhumanrights.com/uploaded_files/counsels_advice_dna_database.pdf)

3 Available on: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=573811&SecMode=1&DocId=601410&Usage=2>

Home Office that batch files may need to be revisited in case of a dispute of DNA evidence in court is unconvincing. Disputes in court about the reliability of an individual's DNA profile (as opposed to a crime scene DNA profile) should normally be resolved by a fresh analysis of that individual's DNA, which can easily be collected from the accused, rather than by tracking back the profile to the batch file in the laboratory. A fresh analysis is essential to avoid errors due to sample mix-ups or laboratory contamination which may not be identified simply by revisiting computer files.

GeneWatch UK recommends that the status and use of batch files created at Forensic Science Northern Ireland (FSNI) is clarified, preferably with the assistance of the Information Commissioner's Office Northern Ireland, including: (i) whether or not such batch files are in practice created and retained at FSNI; and (ii) whether indefinite retention of such files is really necessary and proportionate. A revised provision should then be introduced which ideally eliminates the retention of copies altogether or, at minimum, provides a time limit or other restrictions on the retention of such data.

### **Destruction of samples: 63M**

GeneWatch UK welcomes the provisions for the destruction of samples once the computerised DNA profiles needed for identification purposes have been obtained from them. This is an important protection for privacy and human rights because stored DNA samples contain unlimited genetic information, including health-related information. Temporary retention of samples is necessary for quality assurance purposes and the stated period of six months' retention is clearly adequate for this, especially since Chief Constables may request an extension if necessary in complex cases. Biological samples are already destroyed in some countries with DNA databases, such as Germany, and will be destroyed in England and Wales once the Protection of Freedoms Bill is implemented. Adoption of this provision is therefore in line with best practice internationally.

### **Use of retained material: 63N(1)**

There are two problems with the provision 63N(1) which defines the uses to which retained material can be put.

Firstly, the phrase "purposes related to" the prevention or detection of crime can be interpreted broadly and is open to abuse. In England and Wales, this phrase was used to allow controversial research attempting to predict people's ethnic appearance from their DNA profiles, on the grounds that such research involved a purpose related to the prevention or detection of crime. Whilst research relevant to improving operation of the database (e.g. checking for errors and false matches) should be allowed, it is unethical to conduct research which attempts to link DNA profiles or other genetic information with physical characteristics or other attributes without people's consent. GeneWatch recommends that an additional clause is added to specifically prevent such uses.

Secondly, the use of material to identify "the person to whom the material relates" is also open to abuse. This phrase first appeared in the Counter-Terrorism Act 2008: it was not part of the original purpose for which the DNA database was established in 1995. This use goes beyond the identification of deceased persons and body parts to allow the identification of living persons who are not suspected of committing a crime. Living persons who are suspected of crimes or might be the victims of crimes (e.g. missing children or kidnapped persons) are adequately covered by provision 63N(1)(a), which allows their DNA records to be used for purposes related to the prevention or detection of crime. It is extremely questionable whether the police should be allowed to use DNA or fingerprints to track individuals who are not suspected of committing (or being a victim of) an offence. This provision would, for example, allow the police to collect DNA from mugs or glasses left at a political meeting and see if anyone present had a record on the DNA database, thus identifying them by name and allowing the stored information in, or linked to, their DNA database record to be used to track them down. Because parts of an individual's DNA are shared with relatives, the

database could also be searched to find relatives of the individuals present at the meeting using a “familial search” (which identifies partial matches with DNA profiles that may belong to relatives). Such searches can be used to track down biological relatives and to identify paternity and non-paternity. Since DNA database records in Northern Ireland are copied to the UK National DNA Database in England, use of these records for the identification of living persons not suspected of committing any crime would extend to police forces there. Further, this provision sets a poor precedent for other countries which are currently debating legislation to establish or expand DNA databases (e.g. Brazil, India, South Africa) or have proposed creating DNA databases of their whole populations (UAE, Pakistan, Uzbekistan). The phrase “the person to whom the material relates” should therefore be deleted and replaced with “body parts”.

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# Mindwise



## Comments on the Criminal Justice Bill introduced in the Northern Ireland Assembly on 25th June 2012.(Bill 10/11-15)

### **MindWise**

MindWise is a leading membership charity which supports those affected by severe mental illness and other mental health difficulties and promotes early intervention. Our mission is to transform lives and develop new visions for mental health by challenging stigma and discrimination, and by providing quality services and support. We believe in dignity and respect for each individual, fair treatment, partnership working and most importantly in recovery to achieve a quality of life for those affected by mental illness.

### **Sections 1-4, The review of sex offender notification procedures.**

We fully appreciate the necessary safety measure incorporated in this legislation to protect potential victims, and we support this .

As a mental health charity devoted to the ethos of 'recovery' we believe people can turn their lives around with the right support.

So we are pleased to see in Schedule 1 to the bill the ability for the Chief Constable to review the notification period particularly for the young offender under 18 years who may have offended many years before as a teenager.

The Chief Constable may consider the seriousness of the offence and age of the offender and after 8 years notification, find that reporting to police is no longer necessary. We support this development.

### **Section 5-6 Trafficking people for sexual or other exploitation.**

We fully support legislators in their effort to prevent this degrading and vile offence, and therefore fully endorse all measures in this bill.

We would welcome accompanying legislation for enhanced sentencing where the victim is a mentally vulnerable person. The exportation of any person is to be abhorred, but should the victim be exploited because they are young or mentally vulnerable, then this should attract a greater sanction, thus sending out a message of support in the justice system for those weaker members of society.

The current sentence is :- on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both; on conviction on indictment, to imprisonment for a term not exceeding 14years.

However the 2011 trafficking in Persons Report - United Kingdom published 27 June 2011 tells a different story.

Authorities have not convicted an offender for human trafficking in Northern Ireland, Wales, or Scotland. Since the 2003 Sexual Offences Act, and its 2004 Asylum and Immigration Act, came in to play, which prescribe penalties of a maximum of 14 years and 10 years' imprisonment, respectively.

Traffickers convicted under its Sexual Offenses Act resulted in an average sentence of three years' and eight months imprisonment; sex traffickers convicted under other laws received average sentences of two years and six months'.

In January 2011 there were conviction with sentences of British nationals totaling 19 years imprisonment for reportedly forcing approximately 100 children, some as young as 12, into prostitution.

In 2011, a retired doctor was convicted under the Asylum and Immigration Act for subjecting her Tanzanian domestic worker to conditions of slavery. She received a two year suspended sentence.

*2011 Trafficking in Persons Report - United Kingdom*, 27 June 2011, available at: <http://www.unhcr.org/refworld/docid/4e12ee3ac.html>

## Section 7 and Schedule 2 retention of fingerprints, DNA profiles etc.

We take a neutral stance on this subject.

As a mental health charity we support the human rights of individuals and oppose discrimination. We see nothing in the provisions of Schedule 2 to alarm us on that issue.

The legislator has in our view endeavored to draw a balance between investigate necessity and the rights of the un-convicted person.

In conclusion we see the bill as a positive step to enhance existing legislation.

On behalf of MindWise;-

Mr. Stanley Booth M.B.E., Appropriate Adult Scheme Manager Mindwise,  
Telephone 028 9040 2323, [Stanley.booth@mindwisenv.org](mailto:Stanley.booth@mindwisenv.org)

# National Society for the Prevention of Cruelty to Children

## Submission by the NSPCC Northern Ireland to the NI Assembly Criminal Justice Bill

### Introduction

1. The NSPCC is grateful for the opportunity to provide written evidence to the Assembly Justice Committee on a number of provisions in the Criminal Justice Bill and in particular Clauses 1, 3, 4, 5 and 6.
2. The NSPCC is the lead NGO in child protection and uniquely has powers under the Children (NI) Order 1995 as an authorised person to use a number of legal remedies to protect children. We are also a core member of the new Safeguarding Board for Northern Ireland (SBNI) and are a member of the Strategic Management Board of Public Protection Arrangements Northern Ireland (PPANI) as provided for by article 49 and 50 of the Criminal Justice (NI) Order 2008. We have been very involved with Public Protection Arrangements since the inception of the Multi Agency Sex Offender Risk Assessment and Management arrangements (MASRAM) in 2002. The NSPCC also provides services to children who engage in harmful sexual behaviour and therapeutic recovery services for those who have been abused.

### Review of indefinite offender notification requirements

3. The current provisions of indefinite notification date back to the now repealed Sex Offenders Act 1997 which was introduced to England, Wales and NI. This required indefinite notification requirements on individuals convicted on a qualifying offence<sup>1</sup>.
4. The Bill introduces a provision for a qualifying offender to apply for a review to the Chief Constable after 15 years. From our own practice experience of sex offenders we know that some, despite all attempts at rehabilitation, will remain a significant risk for the duration of their lives. Where a paedophile has sexually abused a child registration should be for life.
5. If the Committee and Assembly do approve the Clause in the Bill an important safeguard will also be that within the PPANI Manual of Practice it is possible for a qualifying offender to be brought into assessment and risk management arrangements if there are future concerns<sup>2</sup>. This could helpfully be highlighted in the Committee debate.
6. The Schedule of the Bill sets the initial review for lifetime notification applications as 8 years for someone under 18 and 15 years for those 18 and over and we support special measures for young people. While young people will have committed a very serious offence in the first instance to acquire this level of notification requirement, we do support difference of treatment for this age group. Research has shown that treatment provision can be successful with young people and most young people who demonstrate harmful sexual behaviour do not go on to become adult sex offenders.<sup>34</sup>

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1 Superseded by the Sexual Offences Act 2003 and set out in Section 82

2 [http://www.publicprotectionni.com/uploads/PDF/PPANI\\_Manual\\_of\\_Practice.pdf](http://www.publicprotectionni.com/uploads/PDF/PPANI_Manual_of_Practice.pdf)

3 [http://www.community.nsw.gov.au/docswr/\\_assets/main/documents/adolescents\\_literature\\_review.pdf](http://www.community.nsw.gov.au/docswr/_assets/main/documents/adolescents_literature_review.pdf)

4 <http://www.csom.org/pubs/juvbrf10.html>

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7. The Schedule to the Bill sets out factors for the Chief Constable to consider when arriving at a determination to deregister an individual and these are set out in Paragraph 3 (2) (a) to (k). We would suggest some further factors the Committee may consider helpful to include in this or request the Department of Justice to highlight in guidance (9 below):
- The need for the welfare and protection of the victim(s) to be paramount;
  - In cases involving sex offenders who have abused children, child protection and safeguarding must be a prime consideration and the Chief Constable's assessment of a sex offenders application to be removed from notification arrangements should include views and evidence from children's social care professionals and any views from victims as appropriate;
  - Risk assessments must be informed by empirical, objective evidence, and any decision taken based on transparent and clear criteria. Decisions taken must be well documented;
  - A lack of reported incidents or concerns does not automatically equate to a lack of risk. Risk assessments for the purposes of considering deregistration should not be based on absence of evidence that a risk exists but rather on **positive evidence** that the risk once posed by the offender has been substantially reduced, and that the offender poses no current or future risk to the public.
8. It is helpful that the Schedule provides for statutory guidance to be produced on the issue and process. NSPCC would like to see the welfare and protection of children being paramount and it should deal with situations where an agency or agencies have a contrary view to the police that an individual does continue to pose a risk, guidance needs to set in place a process for dealing with this.

#### **Notification requirements for qualifying EEA offenders**

9. This section introduces a new provision requiring qualifying offenders to notify the police on entrance to Northern Ireland. We believe this a very important provision for a number of reasons. Currently the onus on finding and requiring an offender to register lies with the police and through application for a notification order<sup>5</sup>. This places additional unnecessary responsibility on the police and is problematic where an individual enters the jurisdiction unknown to the authorities. In the Republic of Ireland the Sex Offenders Act 2001 requires that the individual registers with the authorities on entry to the country and this seems a very sensible provision which the NSPCC supports; indeed it is something which other jurisdictions in Great Britain may wish to consider. The provision relates to the European Economic Area (EEA) state territories but it is something which the Committee may wish to ask for clarification on in relation to extent to any qualifying offence outside of the jurisdiction.

#### **Sex Offender Prevention Orders**

10. The provision of Sex Offence Prevention Orders has become an important tool for agencies involved in Public Protection but are framed in such a way in the 2003 Act that they restrict what an individual can't do. We welcome a move to issue positive requirements and this should work well, for example, in relation to accommodation requirements and where an offender is required to live or to compel an offender to undergo an anger management course.

#### **Trafficking**

11. The new provisions within the Bill in relation to trafficking are welcome new safeguards which bring NI into line with EU directives on human trafficking by ensuring that those who seek to traffic adults or children across international borders are not immune from prosecution in Northern Ireland and addressing internal trafficking for the purposes of sexual exploitation.

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5 Section 97 Sexual Offences Act 2003

12. In September 2011, in partnership with Barnardo's in Northern Ireland, the NSPCC published a Policy and Practice briefing "*Separated Children and Child Trafficking in Northern Ireland*"<sup>6</sup> which highlighted the findings of a scoping study undertaken by the two agencies. This showed that while the incidence of trafficked children in Northern Ireland is small, it is important to recognise this can be a hidden problem and difficult to identify. Research indicates 'there can be a lack of awareness by the general public and some practitioners which is enhanced by a culture of disbelief'. However, if this is addressed, more cases of child trafficking can be identified (Pearce et al, 2009). The report recommended that professionals who come into contact with separated/trafficked children in Northern Ireland should be trained to understand and effectively respond to their needs. Awareness-raising, embedding knowledge and building professionals' confidence about the issue of separated children, and child trafficking in particular, is vital for effective safeguarding. This should apply to those in the criminal justice system as well as professionals in education, social services, health and the voluntary sectors.
13. The committee will be aware that the Public Prosecution Service is currently consulting on its "*Policy for Prosecuting Cases of Human Trafficking*" in which they propose to "work closely with the police, other colleagues in the criminal justice system and the voluntary sector to identify ways to increase disruption, prevention, investigation and prosecution as well as improving victim and witness care and protection. It is recognised that non-governmental organisations will often have greater experience of victims and their differing needs and that a criminal justice route is not the only way of responding to trafficking; criminal (and civil) law may need to be used in conjunction with support services for victims." The proposed legislative provisions will strengthen further the inter-agency approach to tackling the issue of trafficking.

#### **Other issues**

14. Under the Sexual Offences Act 2003, children who have committed a sexual offence are subject to the same notification requirements as adults. Although the length of their notification period is automatically halved, and they have the possibility of varying a notification direction, this does not go far enough in recognising and attempting to meet the rights, needs and vulnerabilities which are specific to children. No consideration is given to how such requirements may affect the lives of young people, how regular contact with criminal justice agencies may lead to them being stigmatised at a young age, or to how the notification requirements could be tailored to better fit in with the reality of children's everyday lives, for example in relation to their attendance at school and their widespread use of social networking sites. As such, the current requirements do not constitute a child centred and welfare-based approach to their management. On a wider issue the Committee may wish to consider if a review should be conducted into the effectiveness, proportionality and impact of the current and proposed notification requirements on young people who have sexually offended.

#### **Colin Reid**

Policy and Public Affairs Manager  
NSPCC Northern Ireland

creid@nspcc.org.uk

Kathleen Toner  
Policy Officer  
NSPCC Northern Ireland

kathleen.toner@nspcc.org.uk

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6 [http://www.nspcc.org.uk/Inform/policyandpublicaffairs/northernireland/separated\\_children\\_child\\_trafficking\\_wdf84819.pdf](http://www.nspcc.org.uk/Inform/policyandpublicaffairs/northernireland/separated_children_child_trafficking_wdf84819.pdf)

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# Newtownabbey Borough Council

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**From:** Logan Cathcart <lcathcart@newtownabbey.gov.uk>  
**Sent:** 23 August 2012 14:18  
**To:** +Comm. Justice Public Email  
**Subject:** Criminal Justice Bill

Dear Christine

I refer to your correspondence to our Chief Executive dated 11 July 2012 regarding the Criminal Justice Bill.

The matter was considered at our Consultation Sub Committee on 16 August 2012, when the following response was agreed:

- (a) the Criminal Justice Bill be noted
- (b) the Assembly be advised that an earlier opportunity to consult on matters would be appreciated.

If I can be of any further assistance, please do not hesitate to contact me.

Thank you

*Logan Cathcart  
 Council Business Services  
 Newtownabbey Borough Council  
 Mossley Mill  
 Newtownabbey BT36 5QA  
 Tel: 028 90340086  
 Fax: 028 90340200*

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# Northern Ireland Association for the Care and Resettlement of Offenders

**DATE: 31/08/2012**

**CRU Ref: 2012/57**

**NIACRO Ref: HT025453**

Ms. Christine Darrah  
Committee Clerk  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
BT4 3XX

31st August 2012

Dear Christine

I enclose NIACRO's response to the Justice Committee consultation on the Criminal Justice Bill.

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation, working for over 40 years to reduce crime and its impact on people and communities. NIACRO provides services for and works with children and young people; with adults in the community and with people in prison and their families, whilst working to influence others and apply all of our resources effectively.

NIACRO receives funding from, and works in partnership with, a range of statutory departments and agencies in Northern Ireland, including criminal justice, health, social services, housing and others.

We welcome the opportunity to respond to this consultation and are keen to engage further if that would be helpful.

If you require any further information, please do not hesitate to contact us.

We look forward to receiving the final policy document.

Yours faithfully

**Pat Conway**

Director of Services

Enc

## NIACRO Response to the Criminal Justice Bill Consultation

NIACRO, the Northern Ireland Association for the Care and Resettlement of Offenders, is a voluntary organisation working for over 40 years to reduce crime and its impact on people and communities. We work with children and young people; adults in the community; and people in prison and their families. We welcome the opportunity to respond to this consultation, particularly as it raises important issues with regard to civil liberties.

Having discussed the content of the draft Bill with colleagues across the voluntary and community sector, we are aware that there is considerable strength of feeling over some particular aspects of this Bill. Whilst we outline our concerns below, we would be keen to meet with the Justice Committee to explain our concerns in greater detail.

Turning to the content of the Bill, we consider each element in turn as follows.

### **Sex offender notification**

NIACRO welcomes the proposals contained within the Bill, which ensure that the notification arrangements for people convicted of sexual or violent offences are in line with Article 8 of the European Convention on Human Rights. This will allow resources to be targeted towards those who present a greater risk to public safety, and reduce unnecessary monitoring of those who no longer present such risks.

### **Human Trafficking provisions**

NIACRO welcomes the introduction of specific legislation to tackle human trafficking, but would wish for further clarity on the following points:

- i. How do these provisions link to those within the draft Human Trafficking and Exploitation Bill, recently introduced by Lord Morrow;
- ii. What disposals will be available to the courts for those found guilty of offences under this new legislation; and
- iii. Has consideration been given to the impact of the creation of these new offences on the Public Protection Arrangements, if any?

### **The retention of fingerprints, samples, etc**

NIACRO has serious concerns about the provisions contained within this section of the Bill.

Our comments on the key proposals, as outlined in the Explanatory and Financial Memorandum to the Bill, are as follows:

#### **Non-convicted persons**

Immediate destruction of fingerprints and DNA profile from persons –

- arrested for or charged with, but not convicted of, a minor offence; or
- arrested for, but not charged with, a serious offence (unless prescribed circumstances apply).

Retention of fingerprints and DNA profile from persons –

- arrested for, but not charged with, a serious offence (if prescribed circumstances apply); or
- charged with, but not convicted of, a serious offence,

for a period of three years, with an extension of two years available on application to the courts.

The notion of retaining information from anyone who falls under the category of “non-convicted persons” is clearly offensive to the notion of innocence unless and until guilt is proven. The entire justice system is based on the principle that every person, whether questioned, charged or otherwise suspected of an offence, is innocent, unless their guilt is proven within a court. The suggestion of retaining fingerprints from someone who is “charged with but not convicted” of any offence is quite blatantly disregarding the court’s judgement in such a case. Furthermore, no description is provided of the “prescribed circumstances” under which someone who is only arrested, and not even charged with, an offence should have their DNA or fingerprints retained. Whilst we support the retention of relevant biometric material for the duration of any investigation, or consequent appeal, once such inquiries have been concluded, and a person’s innocence retained, there does not appear to be any good reason for retaining their DNA or fingerprints alongside information about offences of which they were never convicted.

### **Convicted persons**

Indefinite retention of fingerprints and DNA profiles for all adults convicted of a recordable offence.

This clause is particularly surprising, given that the judge in the *S and Marper v UK* case, which is stated as the case law to which these amendments seek to adhere, noted that “in particular, the Court was struck by the ‘blanket and indiscriminate’ nature of the power to retain material irrespective of the nature or gravity of the offence with which the offender was originally suspected”. Such a blanket retention policy would not appear to be consistent with the judge’s comments, nor with the spirit of reforming such a system. To illustrate this further, it might be helpful to consider what constitutes a “recordable” offence. The legislation, as currently drafted, defines a “recordable offence” as “one punishable by imprisonment or otherwise listed in regulation 2 of the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989 (S.R. 1989 No. 442).” It is clear that the judge’s concern was to ensure that those convicted of serious offences, who present a risk to public safety, would have their profiles retained to assist in future criminal investigations. But using this definition will be the equivalent of employing a sledgehammer to crack a peanut. For not only does it include people convicted of minor offences who are never actually sent to prison, but could have been, it also includes people who are unable to pay a range of fines, or apparently those who commit a series of antiquated offences, including:

*“Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall be liable to a penalty not exceeding [level 3 on the standard scale] for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison, there to remain for a period not exceeding fourteen days, . . .*

- Every person who flies any kite, or who makes or uses any slide upon ice or snow:
- Every person who beats or shakes any carpet, rug, or mat (except door mats, beaten or shaken before the hour of eight in the morning):
- Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down:...”

(The Town Police Clauses Act 1847 – listed as “recordable offences” under the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989)

It is clearly irrelevant whether a person is actually ever sentenced to custody for such an offence, as the definition of “punishable by imprisonment” increases the potential number of people who will be considered to have committed a relevant offence under these regulations quite considerably, to include those who **could** have been sent to prison for a whole range

of offences. Should such a person have their fingerprints or DNA sampled in the course of an investigation, they can expect that information retained indefinitely. In our view, that represents, at best, a considerable waste of police resources and, at worst, a gross offence to civil liberties.

A further issue arises with the maintenance of “indefinite” retention of biometric materials. The underlying principle of the legislation governing criminal records is that after various periods, in specific circumstances, certain convictions become “spent” and no longer have to be declared. Whilst we have long called for amendments to both the Rehabilitation of Offenders (Northern Ireland) Order 1978 and the Rehabilitation of Offenders (Exceptions) Order 1979, we believe the proposals in the Criminal Justice Bill should at least be consistent with the approaches they set out. The Bill should, therefore, differentiate between varying lengths of imprisonment and the nature of different offences, with the basic principle that biometric data should never be retained for longer than the relevant rehabilitation period.

On the issue of consistency, given that the Department of Justice is currently considering undertaking review of the scope of “recordable” offences, we recommend that this legislation is not commenced until after the outcome of that review to ensure any new definition is automatically incorporated.

#### **Convicted under-18s**

On first conviction for a minor offence, retention of fingerprints and DNA profiles for –

- five years, if the sentence is non-custodial; or
- five years plus length of sentence (if given a custodial sentence of less than five years).

Indefinite retention of fingerprints and DNA profiles –

- where a custodial sentence of five years or more is imposed;
- on conviction for a serious offence; or
- on a second conviction.

Once again, this approach is entirely inconsistent with the spirit of the Youth Justice Review, who recommended that criminal records be “wiped” when a young person turns 18. Are we to assume from this proposal that the Department of Justice have decided not to pursue this approach? The idea of retaining a young person’s biometric data for five years after even a caution is clearly disproportionate, and sits in opposition to any attempt to divert young people from the justice system. If the system is committed to de-criminalising young people, it should not be seeking to build or retain any such profiles, for five years or any longer period.

Considering some of the real situations which could lead to someone’s DNA being indefinitely retained highlights just how disproportionate such an approach would be. Take the example of a young person in care, who we know is statistically much more likely to come into contact with the justice system, who receives two cautions or youth conference orders: their DNA and fingerprints will be retained indefinitely. We believe that “the system” is sending out two contradictory messages: on the one hand, they are warning young people about their unacceptable behaviour and encouraging them to change, whilst at the same time retaining information about them that implies they don’t believe such change is possible.

In summary, we have serious concerns around the proposals contained within the Criminal Justice Bill, relating not only to the treatment of biometric data from adults and young people who have never been convicted of any offence, but also from those who have been. We are grateful for the opportunity to submit this evidence and hope that the Committee finds our comments helpful in examining the contents of the Bill. We would welcome the opportunity to provide oral evidence to the Committee on the contents of the Bill, and are happy to further discuss or clarify anything within this written evidence in advance of this.



# Northern Ireland Commissioner for Children and Young People



**patricia lewsley-mooney**  
commissioner

Mrs Christine Darrah  
Clerk to the Justice Committee  
NI Assembly  
Room 242 Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST BT4 3XX

31 August 2012

Our ref: 12/PD/PLM/079

Dear Mrs Darrah

This letter is in response to the Northern Ireland Assembly Justice Committee's request for views and comments regarding the contents of the draft Criminal Justice Bill.

The Northern Ireland Commissioner for Children and Young People (NICCY) has a number of significant concerns regarding the legislative proposals contained in the draft Bill. These are mainly focused on the clauses and schedules pertaining to the retention of fingerprints and DNA profiles. NICCY has not detailed any specific comments regarding the provisions relating to 'Sex Offenders', however we will closely monitor the development of the legislation in relation to this issue. With regard to the clauses concerning 'Trafficking People for Exploitation', NICCY wishes to highlight a number of key issues.

## **'Trafficking People for Exploitation'**

In May 2012, NICCY responded to the Department of Justice's consultation on amending the law to introduce the new trafficking offences<sup>1</sup>. We welcomed the development as a progressive step towards implementation of the European Union (EU) Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. We also noted the advice of the Department within the March 2012 consultation document that there would be "little scope to influence" the

<sup>1</sup> NICCY's response to the consultation can be viewed via the following link:

[http://www.niccy.org/uploaded\\_docs/2012/Consultations/Apr-July/NICCY%20response%20to%20DOJ%20consultation%20on%20legislative%20amendments%20and%20DOJ%20engagement%20in%20relation%20to%20human%20trafficking%2031%205%202012.pdf](http://www.niccy.org/uploaded_docs/2012/Consultations/Apr-July/NICCY%20response%20to%20DOJ%20consultation%20on%20legislative%20amendments%20and%20DOJ%20engagement%20in%20relation%20to%20human%20trafficking%2031%205%202012.pdf)  
[last accessed 30 August 2012].



proposed legislative amendments, due to the fact that they *"are required in order to comply with the EU Directive"*<sup>2</sup>. In our response to the Department, NICCY highlighted that the obligation to create the new criminal offences, in order to comply with the Directive, does not preclude the implementation of additional measures which would further progress the legislative and policy framework.

NICCY has no specific comments to make regarding Clauses 5 and 6 of the draft Criminal Justice Bill. We would highlight, however, that the safeguarding and promotion of the rights and best interests of separated children and young people subject to immigration control in NI is an important issue for the Commissioner. We believe that the risk of trafficking of the small number of separated children subject to immigration control in NI should not be considered separately from the issue of the complex immigration processes to which these children are subject. It may be of interest to the Committee to hear that the Commissioner will shortly be commissioning a focused piece of research in the area of separated children subject to immigration control.

#### **Retention of Fingerprints, DNA profiles, etc**

NICCY responded to the consultation issued by the Department of Justice on 'Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland' in June 2011. This response is attached for the Committee's information. In this, we highlighted a range of concerns and issues which we believed required further clarification. NICCY would draw the Committee's attention to Section 2 which references relevant articles of the United Nations Convention on the Rights of the Child (UNCRC) and of the European Convention of Human Rights concerning DNA and fingerprint retention and destruction. In relation to the UNCRC, Article 16 concerning the child's right to privacy and to have their privacy protected and Article 40 which references the child's right to be presumed innocent until proven guilty and to have their privacy protected during proceedings, are of particular relevance. In addition, Section 5, page 6 details the Commissioner's specific concerns regarding the consultation proposals, and Section 6 presents NICCY's recommendations to the Department of Justice regarding how the legislation should be taken forward.

NICCY is concerned that few of the issues raised in its response to the Department of Justice have been addressed. Indeed, in reviewing the draft clauses and schedules, there appears to have been only minimal alteration to the original proposals concerning the retention and destruction of DNA profiles and fingerprints and their application to children and young people. NICCY is therefore concerned that insufficient consideration has been given to the potentially negative implications of retaining such information, particularly where it impacts on a child or young person's

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<sup>2</sup> Department of Justice (2012) 'Consultation on legislative amendments and Department of Justice engagement in relation to Human Trafficking', section 1.2

privacy and safety or when it leads to them coming into contact with the criminal justice system.

#### *Obtaining DNA samples and fingerprints from children*

In its evidence to the Committee for Justice on 28 June 2011, the Department of Justice confirmed that under Police And Criminal Evidence legislation, 'a juvenile is defined as anyone under the age of 18' and that 'DNA and fingerprints are held for juveniles between the ages of 10 and 18.' This means that children as young as 10 years may be asked to give DNA samples and fingerprints and, according to the draft Bill to also give their consent to have samples taken. The Commissioner is concerned that children as young as 10 years of age will be required to provide DNA samples and also that it is unclear how their consent will be secured. The UK Government has been criticised by the UN Committee on the Rights of the Child in relation to its failure to respect the privacy rights of children and young people in contact with the criminal justice system. Obtaining and retaining DNA samples and fingerprints from children requires a detailed consideration of their rights under the UNCRC and especially the principle of the best interests of the Child.

#### *Applications to extend the retention period*

The proposal to grant an extension to the retention period of DNA and fingerprint samples and profiles will require very careful monitoring and regulation to ensure that it does not result in the unnecessary and indefinite retention of material, particularly in relation to children and young people. NICCY is of the view that if a court grants an extension to the retention period for the DNA of a child or young person who has been charged but not convicted, this suggests that doubt and suspicion remain regarding their innocence and further stigmatises them. It also contravenes Article 40 of the UNCRC which affords children the right to be presumed innocent until proven guilty according to the law.

#### *Appeals against an extension to the retention period*

The draft Bill indicates that 'the person from whom the material was taken' may appeal against an order to extend the retention period. NICCY would suggest that careful consideration should be given as to how a young person under 18 years will be supported to undertake such an appeal. It is vital that under the Bill, children and young people are afforded the same rights as adults, therefore it is important that appropriate and effective processes/mechanisms are put in place to enable them to pursue an appeal and for any such appeals to be given equal weight and consideration.

#### *Differentiation between adults and children*

The consultation document issued by the Department of Justice stated that 'the proposals will differentiate between adults and juveniles to ensure that particular attention is paid to the protection of minors'. However, the only difference in the Bill's

provisions for adults and children and young people relates to conviction for a first minor offence. Where a young person has no previous convictions, and they receive a custodial sentence of less than 5 years, material may be retained for the length of sentence plus 5 years. Where the sentence exceeds 5 years, the material may be retained indefinitely. Furthermore, where a young person has a previous conviction for a minor offence, and they are charged with or arrested for a minor offence, the draft Bill allows for the indefinite retention of their DNA or fingerprints.

NICCY does not believe that the retention a child or young person's DNA samples or fingerprints for this period of time for conviction of a minor offence, constitutes a proportionate response. Children and young people should be afforded maximum protection under the law. However five years (without adding on the period of the custodial sentence) is a considerable period of time for a child or young person's personal details to be retained by the Government and NICCY would recommend the Committee considers reducing the period of retention of DNA and fingerprint material for young people who are convicted for a first minor offence.

*Inclusion of a caution under definition of offence*

We are concerned that the draft Bill includes a caution within the definition of an offence for which a person is convicted. This means that in certain circumstances, if a child or young person has received a caution for a previous offence, this may lead to their DNA samples or fingerprints being retained indefinitely. Given that the purpose of a caution is to divert young people away from the criminal justice system, the inclusion of cautions under the definition of offences seems inappropriate and disproportionate.

*Non-convicted children and young people*

Where a child or young person is charged but not convicted of a serious offence, and they have no previous convictions, the draft Bill provides that their DNA or fingerprints may be retained for a period of between 3 and 5 years. If a young person has been arrested but not charged, their DNA or fingerprints may only be retained if 'prescribed circumstances apply'. It will be important to ascertain what these circumstances might be and to consider whether this period of retention is proportionate.

NICCY is of the view that where a child or young person has not been convicted for or even charged with an offence, their DNA and fingerprints should not be retained. To do so is to seriously undermine their right to a presumption of innocence until proven guilty, again contravening Article 40 of the UNCRC.

Research suggests that a disproportionate number of young people come into contact with the police and that this may be due to the fact that some of them are more likely to offend in their teenage years. We believe that children and young people's lack of maturity should be taken into account and they should not be stigmatised by actions

undertaken before they reach full maturity. In our response to the Department of Justice's consultation, NICCY suggested that consideration should be given to removing young people's DNA profiles and fingerprints once they reach the age of 18 years, so they are given an opportunity to enter adulthood with a 'clean slate'. Of course, this decision would be dependent on the seriousness of the crimes committed and the number of offences for which they have been convicted. NICCY recommends that particular consideration should be given to this proposal where children or young people have been arrested for or charged with minor offences or have been convicted of first minor offences.

### **Conclusion**

The proposals in the draft Bill mean that many young people will enter the criminal justice system and be given a criminal record. NICCY strongly believes that wherever possible, the Government should actively seek to divert young people away from the criminal justice system. Contact with the criminal justice system clearly has an adverse impact on young people's lives, potentially negatively impacting on their physical, mental, emotional and social development and creating significant challenges for them in re-integrating into society.

NICCY is particularly concerned that significant human rights principles of proportionality, necessity and presumption of innocence strongly underpin the draft Bill's provisions regarding the retention and destruction of DNA samples and fingerprints. Whilst recognising the value of this material as essential intelligence and evidence tools, this has to be balanced against the extremely personal nature of the data. Consideration should be given to the potentially negative implications of retaining this information, particularly when it impacts on a child or young person's privacy and safety or leads to them coming into contact with the criminal justice system. The special status of children and young people should be taken into account and their protection identified as a key priority.

NICCY would like to thank the Justice Committee for the opportunity to comment on the draft Bill. Should the Committee require any further information, please do not hesitate to contact the office.

Yours sincerely

  
Mairéad McCafferty  
Chief Executive



## **Response from the Northern Ireland Commissioner for Children and Young People to Consultation on Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland**

### **1.0 Introduction**

The Office of Commissioner for Children and Young People (NICCY) was created in accordance with 'The Commissioner for Children and Young People (Northern Ireland) Order' (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland.

Under Articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review, the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of our Office is children and young people from birth up to 18 years, or 21 years of age if the young person is disabled or in the care of Social Services.

In determining how to carry out her functions, the Commissioner's paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the opportunity to respond to this consultation by the Department of Justice on DNA and fingerprint retention and destruction.

### **2.0 International Law**

#### **2.1 Children's Rights**

The United Nations Convention on the Rights of the Child (UNCRC) provides the overarching framework which guides the work of NICCY. The UK Government, including Northern Ireland, is a signatory to the Convention and has agreed to uphold the rights of children and young people based on the Convention.

NICCY appreciates that there are often complexities when reconciling the rights of children and young people with their welfare and best interests. NICCY would recommend the proposals are reviewed against the following relevant Articles within the UNCRC and that these are incorporated in the policy as underlying principles, to ensure that the rights and best interests of children and young people are upheld and protected

- Article 2: Children shall not be discriminated against and shall have equal access to all articles in the UNCRC





- Article 3: All decisions taken which affect children's lives should be taken in the child's best interests.
- Article 6: All children have the right to life and to the fullest level of development.
- Article 12: Children have the right to have their voices heard in all matters concerning them.

In reviewing the consultation proposals, the following Articles from the UNCRC are also relevant and require special consideration and reference within the policy.

**Article 16** states that;

*'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. Furthermore, 'the child has the right to the protection of the law against such interference or attacks'.*

The Children's Commissioners for England, Northern Ireland and Wales submitted joint evidence to the UN Committee on the Rights of the Child in June 2008 where they argued that the indefinite retention of children's DNA contravened children's privacy rights under Article 16 of the UNCRC<sup>1</sup>. The UN Committee shared this view in its concluding observations in November 2008 expressing concerns that; *"data regarding children is kept in the national DNA database irrespective of whether the child is ultimately charged or found guilty"*. The Committee called on the Government to introduce stronger regulations for data protection in relation to both legislation and practice that may impact upon children and young people's right to privacy<sup>2</sup>.

**Article 40** states that;

*'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.*

Furthermore, *'Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

<sup>1</sup> UK Commissioners' Report to the UN Committee on the Rights of the Child (2008)

<sup>2</sup> UN Committee on the Rights of the Child, 49<sup>th</sup> Session. *Concluding Observations on UK*, 20<sup>th</sup> October 2006, at para 36.





- (i) *To be presumed innocent until proven guilty according to law and*
- vii) *To have his or her privacy fully respected at all stages of the proceedings.*

In reviewing the relevance of Article 40 to the consultation proposals, the Nuffield Council on Bioethics (2007:xvii)<sup>3</sup> noted, *“it may be argued that retaining bio information from young people is contrary to Article 40 of the UN Convention on the Rights of the Child, in that the Convention requires special attention to be given to the treatment of children by legal systems, to protect them from stigma, and that if they have offended, opportunities for rehabilitation should be maximised. The destruction of relevant criminal justice records and accompanying body samples could become one element in such a rehabilitative process.”*

NICCY strongly encourages the Department of Justice to ensure that this policy reflects **all** the relevant recommendations of the Committee on the Rights of the Child.

## **2.2 European Convention on Human Rights**

The Human Rights Act 1998 (HRA) incorporated provisions of the European Convention on Human Rights into domestic legislation. Although the Human Rights Act is not child-specific, children are afforded the rights contained within it to the same degree as adults, it is therefore essential that the proposals outlined in this consultation are compatible with the following articles of the HRA.

The Consultation proposals note that the European Court of Human Rights intervened with regard to this issue in its judgment in the case of *S and Marper vs the UK*, ruling that the blanket policy regarding the indefinite retention of fingerprints and DNA of all people arrested but not convicted was in breach of the individual’s right to respect for private life, under Article 8 of the European Convention of Human Rights.

**Article 8** states that *‘Everyone has the right to respect for his private and family life, his home and his correspondence’*. It goes on to state that *‘There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-*

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<sup>3</sup> Nuffield Council on Bioethics (2007) *The Forensic Use of Bioinformation: Ethical Issues* (London, September).







*being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others’.*

**Article 6** of the European Convention on Human Rights is also relevant to the Consultation. It states that *‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded...where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice’.*

Also particularly significant to the proposals contained in the Consultation document, Article 6 states that *‘Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law’.*

### 3.0 Research

In 2007, NICCY carried out a major review of children’s rights, which highlighted the gaps, problems and difficulties in the protection, promotion and implementation of children’s rights in Northern Ireland<sup>4</sup>.

In relation to DNA and fingerprint retention, this Review referenced research indicating that DNA samples from over 3,100 under 18 year olds were held and of these, over 1,100 were from young people who had not been convicted or cautioned<sup>5</sup>. We highlighted a number of concerns in relation to the retention of DNA and fingerprints including;

- the potential for unauthorised access, abuses and/or misuses and mistakes;
- the creation of a permanent ‘list of suspects’ that may be made available to a wider range of organisations in the future;
- the use of this information for research projects, and;
- the use of the data for ‘familial searches’ (trying to trace a suspect through their relatives).

<sup>4</sup>NICCY (2008) *Children’s Rights: Rhetoric of Reality: A Review of Children’s Rights in Northern Ireland*, p.78-80.

<sup>5</sup> Save the Children & the Children’s Law Centre (2008). *Northern Ireland NGO Alternative Report: Submission to the UN Committee on the Rights of the Child for Consideration during the Committee’s Scrutiny of the UK Government Report*. Belfast: Save the Children and Children’s Law Centre.





The Review also referenced parental concerns about the retention of young people's DNA and particularly the effect this had in 'criminalising' them<sup>6</sup>. At the time of the Review, NICCY recommended, along with the Children's Commissioners in England and Wales that the Scottish approach to DNA retention be applied throughout the UK.

While the current proposals seek to introduce greater leniency in the practice of DNA and fingerprint retention, NICCY would note that the retention of this information still presents significant risks, a number of which were listed in the bullet points above.

#### **4.0 Consultation with Children and Young People**

NICCY has regularly expressed concern through a broad range of policy and consultation work that Section 75 is not being adequately enforced in respect of the age criterion and that public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. Article 12 of the UNCRC also provides that children have the right to express their opinion in matters directly impacting upon them and have those views given due weight in accordance with the age and maturity of the child.

In addition to this Action 4.1 of Our Children and Young People - Our Pledge Action Plan 2007-2008 states that all Departments should 'consider the views of children and young people in the development of new policy that impact on their age group'. This action places an emphasis on all Ministers to ensure that their department is actively seeking the views and opinions of children and young people.

NICCY would like further information on how the department has sought the views of children and young people at this stage of the consultation. Evidently the consultation proposals impact directly on children and young people. It is therefore important that consideration has been given to their views and experiences with regard to the revised legislative proposals.

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<sup>6</sup>NICCY (2008) p.80





## 5.0 Comments on the Proposal

### 5.1 Background

The NI Commissioner for Children and Young People issued statements in August 2006 and June 2007, highlighting concerns regarding DNA retention and particularly the indefinite retention of DNA samples<sup>7</sup>. NICCY noted that this contravened articles enshrined in the UNCRC and specifically provisions regarding children and young people's privacy and freedom. In 2006, the Commissioner became aware that over 3000 samples of DNA from children and young people under 18 years were retained by the PSNI at that time. The issue was raised with the PSNI and the Policing Board. Subsequently and as noted above, NICCY, along with the Children's Commissioners from England and Wales reported their concerns to the United Nations Committee on the Rights of the Child in November 2008.

In August 2009, the Children's Commissioners for England, Wales and Northern Ireland submitted a joint response to a series of proposals outlining reforms to the National DNA Database, highlighting the Government's failure to respect children's right to privacy and family life under Article 16 of the UNCRC<sup>8</sup>. They also called on Government to ensure that the retention regime was compliant with Article 40 of the UNCRC and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), by establishing clearer differentiation and stronger support for the desirability of reintegration. The Children's Commissioners were concerned that the proposals failed to distinguish between children and adults arrested or convicted of a serious, sexual or terrorism related offences. In the proposals relating to the National DNA database, children who were arrested but not convicted of recordable offences were to continue to have their DNA retained, and any re-arrest before the profile was deleted would transfer them into the regime of adult retention. The three Commissioners highlighted the system in Scotland, commenting that it is 'more fully compliant with the rights of children and provides the best starting point for reform'.

<sup>7</sup> <http://www.niccy.org/article.aspx?menuid=522>, Belfast Telegraph (2006) 'Commissioner Blasts DNA Sampling'

<sup>8</sup> [http://www.niccy.org/uploaded\\_docs/joint%20response%20by%2011%20Million,%20NICCY%20and%20the%20Children's%20Commissioner%20for%20Wales%20to%20the%20Home%20Office%20Re%20Keeping%20the%20Right%20People%20on%20the%20DNA%20Data%20base.%20August%202009.doc](http://www.niccy.org/uploaded_docs/joint%20response%20by%2011%20Million,%20NICCY%20and%20the%20Children's%20Commissioner%20for%20Wales%20to%20the%20Home%20Office%20Re%20Keeping%20the%20Right%20People%20on%20the%20DNA%20Data%20base.%20August%202009.doc)





## **5.2 Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland**

In approaching its consideration of the legislative proposals contained within the consultation document, NICCY wishes to acknowledge the effectiveness of DNA and fingerprint evidence in the detection and prosecution of crime. NICCY also recognizes that it will be necessary to collect and retain DNA profiles and fingerprints for the purposes of criminal investigations and that in some cases, this may include retaining data relating to young people.

NICCY is most concerned however, that human rights principles of proportionality, necessity and presumption of innocence, should strongly underpin these policies, and therefore impose strict limits on data retention. Whilst recognizing the value of DNA profiles as intelligence and evidence tools, this should be balanced against the extremely personal nature of the data retained. Consideration must be given to the potentially negative implications of retaining information, particularly where it impacts on a child or young person's privacy and safety or when it results in them coming into contact with the criminal justice system.

In setting out the proposals regarding DNA and fingerprinting retention and destruction, the Consultation document states that 'the judgment by the European Court of Human Rights does not change the current law in Northern Ireland but...requires us to reconsider and amend our legislation to address the violation elements of the ruling'. Although broadly welcoming the Department's (DoJ) proposal to amend the legislation following the ruling by the European Court of Human Rights, NICCY would reiterate the fact that it has, for some years, expressed significant concerns within local, national and international fora regarding the current policies for DNA and fingerprint retention and destruction and the detrimental impact these policies have on children and young people.

The Consultation document states that the proposals 'seek to differentiate between adults and juveniles to take account of comments of the European Court of Human Rights' and specifically that 'particular attention should be paid to the protection of minors from any detriment that may result from the retention of data and importance of their development and integration into society'. While acknowledging the DoJ's stated commitment to these principles, NICCY wishes to highlight a number of issues where it has particular concerns and to seek clarification with regard to the detail of some of the proposals contained in the Consultation document.





### **5.2.1 Paragraph 4.3**

It is stated in this paragraph that the proposals will differentiate between adults and juveniles. NICCY recommends that the DoJ confirms that it defines juveniles as children and young people aged between 10 and 18 years.

Reference is made in this paragraph and elsewhere in the document to the option for the period of DNA retention to be extended '*on application to a court*'. NICCY requests clarification with regard to who may apply to a court for a further extension and the grounds upon which such a request can be made and indeed granted. Also, it is not clear from the proposals if there is a limit to the number of court applications that may be made. NICCY would be concerned that if there is none, conceivably DNA could be retained indefinitely.

NICCY has concerns about the extension of DNA retention by Court Order and recommends clarification as to how this will be effectively monitored and regulated to ensure it does not result unnecessarily in the indefinite retention of DNA, particularly in respect of children and young people. If a Court can grant an extension to the retention of the DNA of an individual who has been charged but not convicted, it suggests that doubts remain regarding the individual's innocence, further stigmatizing them and leading to greater suspicion about their innocence.

Also it would be a serious matter if applications to Courts were to become routine; if the police, as a matter of course, sought to ensure that they retained a DNA record for all those charged with an offence lest an individual subsequently commits a crime where the retention of DNA information might be helpful.

The Consultation document states that 'the proposals will differentiate between adults and juveniles to ensure that 'particular attention is paid to the protection of minors...' It then explains that a three year retention period will apply to juveniles who have been charged but not convicted for serious offences which may be extended for a further two years on application to a court. However in reviewing the provisions pertaining to 'Non-convicted Persons' in para. 4.5, the same provisions apply to adults, so no particular attention has been paid to minors in this regard, nor separate provisions made for them.

NICCY would question how the proposal to retain the DNA of young people charged but not convicted for serious offences for a period of at least three years (although in practice this could potentially be for an indefinite period), is in their best interests and will support their development and integration within society. NICCY would suggest that this proposal be reviewed and





consideration given to removing the DNA profiles of all young people who have not been convicted of any offence. Exceptional circumstances could be considered, for example where a young person is arrested for a serious violent or sexual offence but is subsequently acquitted or the charges are dropped. In such cases, the period of DNA retention could be reduced to one to two years following acquittal or the dropping of charges.

NICCY is aware that a disproportionate number of young people come into contact with the police. Research indicates that this may be due to the fact that some children are more likely to be involved in criminal activities in their teenage years. However young people are also more visible to the police. The 'demonization' of young people by politicians and the media has gathered apace in recent years. The UN Committee on the Rights of the Child in its 2008 Concluding Observations, noted its concerns about the '*general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the UK, including in the media and may be often the underlying cause of further infringements of their rights*'<sup>9</sup> The UK Children's Commissioners also drew attention to this issue in their Report to the UN Committee, commenting that 'Young people feel the media represents them as anti-social, a group to be feared, selfish and uncaring...' adding that 'the incessant portrayal of children as 'thugs' and 'yobs' not only reinforces the fears of the public but also influences policy and legislation'. In addition, in their recommendations, the Commissioners noted 'There is an urgent need to transform juvenile justice system in the UK...to ensure that it complies with the UNCRC'<sup>10</sup>

### **5.2.2 Paragraph 4.5**

The first set of proposals refer to '*Non-convicted persons*', which NICCY assumes also includes children and young people. NICCY welcomes the first two elements which propose the immediate destruction of fingerprints and DNA profile from persons arrested for or charged but not convicted of a minor offence or arrested for but not charged with a serious offence.

NICCY would recommend, for the purposes of clarifying the application of these proposals, that further definitions of minor offences and serious offences be provided.

<sup>9</sup> Committee on the Rights of the Child, 49<sup>th</sup> Session. *Concluding Observations on the UK*, 20<sup>th</sup> October, para.36.

<sup>10</sup> *UK Children's Commissioners' Report to the UN Committee on the Rights of the Child* (2008), p.33-34.





The third set of proposals apply to 'Convicted under 18s'. While acknowledging that retaining fingerprints and DNA profiles for a five year period provides some safeguards for children and young people, NICCY believes that the proposals do not provide sufficient protection for young people aged between 10 and 18 years. Children and young people should be afforded maximum protection under the law. NICCY is therefore concerned that a child convicted of a minor crime should have their DNA retained at all. Five years is a considerable period of time for a child or young person's personal details to be retained by the Government. NICCY recommends that the Department reconsiders this proposal.

Furthermore, upon receiving a second conviction, even if this is just for a minor offence, a child or young person could have their DNA profile retained for life. This will result in many young people entering the criminal justice system unnecessarily and having a criminal record. NICCY strongly believes that Government should actively seek wherever possible, to divert children and young people away from the criminal justice system. Entry into the criminal justice system clearly has an adverse impact on young people's lives, potentially affecting many aspects of their development and making it difficult for them to integrate into and contribute to wider society. Children and young people should not be stigmatized for activities they have engaged in before reaching maturity, therefore NICCY suggests that consideration be given to removing DNA profiles and fingerprints from young people once they reach the age of 18 years so that they are given the opportunity to enter adulthood with a 'clean slate'. (There may, of course, be exceptions to this, depending on the seriousness of crime(s) committed and the number of offences for which they have been convicted). If the special status of children is genuinely taken into account and their protection identified as a priority, then a more differentiated approach to the retention of their DNA and fingerprints should be considered.

With regard to the retention of DNA data, NICCY would request additional information regarding the sharing of DNA profiles and fingerprints; specifically, who will have access to this information, in what circumstances this information can be accessed and for what particular purposes this information can be used.

NICCY also seeks clarity regarding which databases will contain DNA profiles and fingerprints of individuals in Northern Ireland. The document indicates that three separate databases currently store data; the PSNI maintains a fingerprint database, Forensic Science NI maintains the storage of DNA profiles and profiles are also stored on the UK National DNA database in Birmingham.





### **5.2.3 Paragraphs 4.6, 6.4 and 6.5**

We note the Consultation document's reference to the Protection of Freedom's Bill introduced in Westminster in February 2011. NICCY provided a written submission to the Public Bill Committee for consideration.<sup>11</sup> In considering the DoJ Consultation, NICCY believes there is a need for clarity in terms of the interaction and linkage between it and the proposals contained in the Protection of Freedoms Bill.

The Consultation document notes that 'the Chief Constable will have the ability to extend retention of any material obtained under PACE and terrorism legislation by periods of two years for the purposes of national security'. While acknowledging that the Protection of Freedoms Bill is beyond the remit of this consultation, NICCY would draw attention to the vagueness of the term 'national security' and to the importance of considering the retention of data by the police given the particular context of Northern Ireland as it emerges from a long period of civil conflict.

The Consultation also seeks respondents' views regarding the remit of a Commissioner for the Retention and Use of Biometric Material. NICCY would welcome the appointment of an independent Commissioner who would have oversight of these issues and who would increase public confidence in the work of the criminal justice system. His or her independence and ability to access all information, including that which may pertain to national security, will be vitally important if the Commissioner's role is to be regarded as effective and having validity.

### **5.2.4 Paragraph 4.7**

It is noted that the proposals will apply equally to existing fingerprints and DNA currently retained and there will be a requirement for the phased destruction of some material. It would be helpful for NICCY to learn more about plans for the 'phased' destruction of legacy material and how assurances will be made that such material will be destroyed.

### **5.2.5 Paragraph 5 - Photographs**

The Consultation seeks respondents' views regarding the retention of photographs. Currently these may be retained irrespective of whether a person has been convicted or not. NICCY agrees that there are strong parallels between the retention of DNA samples, fingerprints and photographic images.

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<sup>11</sup> [http://www.niccy.org/uploaded\\_docs/2011/Consultations/April%20-%20June/Submission%20to%20the%20Public%20Bill%20Committee%20on%20the%20Protection%20of%20Freedoms%20Bill%20130511.pdf](http://www.niccy.org/uploaded_docs/2011/Consultations/April%20-%20June/Submission%20to%20the%20Public%20Bill%20Committee%20on%20the%20Protection%20of%20Freedoms%20Bill%20130511.pdf)







While the matter of photograph retention is before the Courts, there would appear to be substantial arguments to support changes in the current retention policy.





## 6.0 Recommendations and Points for Clarification

- NICCY recommends that the Department of Justice confirms that its definition of juveniles is of children and young people aged between 10 and 18 years.
- NICCY requests clarification with regard to who may apply to a court for a further extension to the DNA retention period, the grounds upon which such a request can be made and indeed granted and if there is a limit to the number of court applications that may be made.
- NICCY requests further detail regarding the monitoring and regulation of requests for extensions to the DNA retention period through the Court and particularly in respect of DNA profiles for children and young people.
- NICCY questions how the proposal to retain the DNA of young people charged but not convicted for serious offences for a period of at least three years although potentially for an indefinite period, is in their best interests. NICCY recommends that this element of the proposal be reviewed and consideration given to removing the DNA profiles of all young people who have not been convicted of any offence.
- NICCY is aware that a disproportionate number of young people come into contact with the police and recommends that the Department of Justice carefully considers the contexts in which children and young people do come to the attention of the police. We believe that children and young people’s lack of maturity should be taken into account and that they should not be stigmatized by actions undertaken before reaching full maturity.
- While acknowledging that a five year period of retention of fingerprints and profiles provides some safeguards for children and young people, NICCY believes that the proposals do not provide sufficient protection for those aged between 10 and 18 years. Children and young people should be afforded maximum protection under the law. NICCY is therefore concerned that a child convicted of a minor crime should have their DNA retained at all. Five years is a considerable period of time for a child or young person’s personal details to be retained by Government.
- NICCY strongly believes that Government should actively seek wherever possible, to redirect children and young people away from the criminal justice system. Entry into the criminal justice system clearly has an adverse impact on young people’s lives, potentially affecting many aspects of their development.





- NICCY proposes that consideration be given to removing the DNA profiles and fingerprints of young people once they reach the age of 18 years so that they are given the opportunity to enter adulthood with a 'clean slate'. NICCY recognizes that there may be exceptions to this, depending on the seriousness of crime(s) committed and the number of offences for which they have been convicted). However if the special status of children is genuinely taken into account and their protection identified as a priority, then a more differentiated approach to the retention of their DNA and fingerprints should be considered.
- NICCY requests additional information regarding the sharing of DNA profiles and fingerprints; specifically, who will have access to this information, in what circumstances this information can be accessed and for what purposes this information can be used.
- NICCY recommends that additional information is provided regarding which databases will contain DNA profiles and fingerprints of individuals living in Northern Ireland.
- NICCY would welcome the appointment of an independent Commissioner who would have oversight of the issues outlined in the Consultation document and who would increase public confidence in the work of the criminal justice system. His or her independence and ability to access all information, including that which may pertain to national security, will be vitally important if the Commissioner's role is to be regarded as effective and meaningful.
- NICCY agrees that there are strong parallels between the retention of DNA samples, fingerprints and photographic images. While the matter of photograph retention is before the Courts, there would appear to be substantial arguments to support changes in the current retention policy.



# Northern Ireland Council for Ethnic Minorities



Company Registration No: NI. 36868  
Inland Revenue Charity No: XR 11970

## Submission to the Northern Ireland Assembly Justice Committee on the Criminal Justice Bill 2012

### 1. Introduction

NICEM is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination and where equality and human rights are guaranteed. As an umbrella organisation<sup>1</sup> we represent the views and interests of black and minority ethnic (BME) communities.<sup>2</sup>

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

This brief submission will only address the sections of the Bill that refer to human trafficking, commenting specifically on sections 5-6 of the Bill. This submission will comment on the extent to which the relevant sections of the Bill implement the EU Directive 2011/36/EU (hereafter 'the Directive').<sup>3</sup>

### 2. Section 5 of the Criminal Justice Bill 2012

This provision would insert a new section 58A into the Sexual Offences Act 2003 to create an offence where a person is trafficked for sexual exploitation into, within and out of countries outside the UK. In terms of the actions of an accused trafficker, Section 58A(1)(a) suggests 'arranges' or 'facilitates' will be enough to commit an offence. This is not in line with the language of the Directive and may be open to litigation and could be the subject of judicial interpretation. In order to ensure that the Northern Ireland legislative framework is in line with the EU Directive it is recommended that the words 'arranges or facilitates' is replaced with the following:

*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of*

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1 Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

2 In this document "Black and Minority Ethnic Communities" or "Minority Ethnic Groups" or "Ethnic Minority" has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

3 EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA of 5 April 2011.

*a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*<sup>4</sup>

In accordance with Article 3 of the Directive, it is recommended that a clause is included to extend this offence to persons who may incite, aid, abet or attempt to commit the offence.

Section 5(1)(3) of the Bill sets out the penalties for persons guilty of an offence but does not include penalties for legal persons, despite the fact they are covered by section 5(1)(2) (e) of the Bill. Article 6 of the Directive suggests sanctions for legal persons such as judicial winding-up and disqualification. It may be useful for the legislature to consider such options as the Bill should include sanctions against legal persons as well.

### **3. Section 6 of the Criminal Justice Bill 2012**

Section 6 is quite similar to section 5 of the Bill and therefore the same recommendations apply to this section where relevant in order to ensure that national legislation reflects the language and intention of the Directive in order to ensure effective implementation as set out above.

In addition, section 6 refers to the notion of exploitation but it is not defined in the Bill as it stands. It is recommended that a definition be included to reflect Article 2(3) of the Directive:

*Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.*

In that vein, the legislature should also take Article 2(4) of the Directive into consideration, which provides that the consent of the victim shall be irrelevant where exploitation has taken place.

### **4. Further necessary legislative steps to implement the Directive**

The Directive includes a wide range of provisions relating to investigation and prosecution of traffickers, prevention of human trafficking and the protection of victim's rights as well as the provision of support, including compensation, to victims, particularly child victims. It is acknowledged that the Public Prosecution Service is currently consulting on a policy relating to prosecution guidelines and NICEM intends to submit to that process. However, in relation to prosecution it may be necessary to amend the legal framework as the Directive calls for the non-prosecution of victims, which is currently not possible due to the Justice (Northern Ireland) Act 2002.

Moreover, the legislature should also bear in mind that Northern Ireland is legally bound by other international instruments in terms of its efforts to combat trafficking, i.e. the Council of Europe Convention on Convention on Action against Trafficking in Human Beings 2005<sup>5</sup> and the Protocol to the United Nations Convention against Transnational Organised Crime<sup>6</sup>.

On the whole, while recent developments are to be welcomed, NICEM is concerned that a piecemeal approach to legislative reform in this area will undoubtedly lead to a complex and potentially weak legal framework which could make it more difficult for law enforcement officials and legal practitioners to combat human trafficking and protect and support the victims of this crime.

### **5. Further Information**

For further information in relation to this consultation response please contact:

4 Article 2(1) of the EU Directive 2011/36/EU.

5 CETS No. 197 (2005).

6 Protocol to Prevent, Suppress and Punish Trafficking in Persons, A/RES/55/25 (2001).

Karen McLaughlin  
Legal Policy Officer

or

Helena Macormac  
Strategic Advocacy Project Manager

# Northern Ireland Council for Ethnic Minorities

## Annex A

### ALL PARTY GROUP ON ETHNIC MINORITY COMMUNITIES *SECRETARIAT*

11 October 2012

Dear Mr Paul Givan, MLA

**RE: Advance copy of NICEM's Briefing Paper: Analysis of Current Responses to Human Trafficking in Northern Ireland**

As you will be aware, human trafficking has been highlighted within the All Party Group on Ethnic Minority Communities (APG on EMC) as a key issue impacting upon members of ethnic minority communities. In January 2012, the APG on EMC hosted a seminar on human trafficking, this initiative followed on from a previous seminar held the year before which engaged international experts as well as law enforcement officials. The APG on EMC welcomed the creation of the APG on Human Trafficking (APG on HT) earlier this year to focus on this issue, in addition to this we welcome the recent consultation exercises by the Department of Justice, the Public Prosecution Service and Lord Morrow.

Earlier this year, the Northern Ireland Council for Ethnic Minorities (NICEM) in conjunction with Dr Tomoya Obokata, a member of NICEM's advisory board and advisor to the APG on HT, developed a briefing paper analysing the current responses to Human Trafficking in Northern Ireland. An advance copy of this report is attached for your information

NICEM have presented the recommendations of this report to the Justice Minister, David Ford, Anna Lo MLA, chair of the APG on HT and Treasurer of the APG on EMC and Fra McCann MLA, chair of the APG on EMC. As a result of these meetings it was proposed that 2 actions would be taken forward to foster cross-party discussion and advance recommendations in the report. These actions would be carried out as a joint initiative between the APG on EMC and the APG on HT namely;

- 1) **A joint statement from the 2 APGs will be issued on the 18<sup>th</sup> October**, anti-slavery day in order to present a united cross-party voice in addressing Human Trafficking. (this will be circulated in advance to all Political members of both APGs in order to seek endorsement)
- 2) **A Chatham House Rules Discussion** involving cross-party representation from both the APGs and international experts and key stakeholders will be organized for early November. The attached briefing paper will form the basis of this discussion.

We will be in contact shortly with further details of these initiatives.

Please do not hesitate to contact me if you have any questions.

Best wishes,

**Secretariat to the All Party Group on Ethnic Minority Communities**

Elizabeth Nelson  
Parliamentary and Campaigns Officer  
Northern Ireland Council for Ethnic Minorities  
028 9023 8645  
077 307 47 861  
Elizabeth@nicem.org.uk



**NICEM Briefing Paper:**

**Analysis of Current Responses to**

**Human Trafficking in Northern Ireland**

**Prepared by**

**Professor Tom Obokata**

**Keele University**

## **Executive Summary**

Human trafficking has become a serious contemporary problem. Although this practice has existed for a long time in history, it has captured the attention of the general public as well as policy makers in Northern Ireland only recently. Human trafficking is not merely a criminal offence; it is a gross violation of human rights of its victims. This means that any action against this act must be effective not only in prosecuting and punishing those responsible, but also in protecting the victims. Further, given that human trafficking is a global phenomenon, a consolidated response at national, regional and international levels is required. This is particularly true for Northern Ireland as it has to deal with trafficking to/from other parts of the United Kingdom as well as the Republic of Ireland.

There are three key regional and international instruments which are designed to facilitate such a concerted action against human trafficking. The first is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* adopted by the United Nations in 2000. It provides an internationally agreed definition of trafficking and establishes general obligations to prosecute and prevent trafficking and to protect victims. The United Kingdom ratified this instrument in February 2006 and is legally bound by it. Two more instruments are relevant to the United Kingdom and Northern Ireland: *Council of Europe Convention on Action against Trafficking in Human Beings 2005* and *EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims 2011*. These instruments are more human rights friendly as they have stronger provisions on the protection of victims of human trafficking. The United Kingdom ratified the Council of Europe Convention in December 2008. The Group of Experts on Action against Trafficking in Human Beings (GRETA) established under this Convention visited the United Kingdom and

Northern Ireland in October 2011 to monitor the implementation of this Convention, and is due to release an evaluation report in the summer 2012. In relation to the EU Directive, the United Kingdom has agreed to be bound by it, and it has until 6 April 2013 to implement various obligations contained therein.

Although the exact wording and the contents of provisions are not exactly the same, three key obligations can be identified from these European and international instruments: obligations to 1) prohibit/prosecute trafficking/traffickers, 2) protect victims, and 3) prevent trafficking. This briefing paper examines the extent to which these obligations are implemented in Northern Ireland. In relation to the first obligation to prohibit and prosecute trafficking, a good legislative framework, as represented by the Sexual Offences Act 2003 and Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, exists in Northern Ireland. The punishment regime (14 years' imprisonment) is better than other European counterparts and therefore it can be concluded that the legislative framework itself complies with the relevant international and regional standards. Nevertheless, the law enforcement practice raises some concerns. Of particular importance is the sentencing regime as the actual sentences handed down are much lower in practice. This is due to the confusing nature of the relevant guidelines issued by the Government, and there is a need to revise it so that traffickers receive appropriate punishment.

As to the second obligation to protect victims, there has been some improvement in Northern Ireland. The National Referral Mechanism (NRM) operates in this jurisdiction where designated first responders refer potential/actual victims to the Competent Authorities (CAs), which make initial/conclusive decision on their victim status. Victims are provided with an initial reflection period of 45 days to recover from their ordeals and the possibility of further assistance if they are willing

to co-operate with the relevant authorities by providing testimony or other evidence. Nevertheless, a number of problems are also evident. The current reflection period is not long enough for victims to recover, and attaching a condition for provision of support goes against the instruments such as the Council of Europe Convention and the EU Directive. It is also difficult to appeal against the decisions made by the CAs, and this is problematic from a point of view of accountability. A lack of adequate resources among the key service providers is also recognised, and the Northern Ireland Government must make more active use of confiscated criminal proceeds. Moreover, non-criminalisation of victims, who are forced to commit crimes, should be considered to extend sufficient protection.

Finally, in relation to the obligation to prevent trafficking, one of the most pressing issue facing Northern Ireland is addressing the demand for trafficked victims in sexual and labour services. Northern Ireland has a decent legislative framework to address the demand, ranging from the Sexual Offences (Northern Ireland) Order 2008 to the Coroners and Justice Act 2009. However, numerous legislative gaps, particularly relating to punishment, are recognised simultaneously. The sentences relating to hiring and exploiting illegal migrants in sex and other industries, for instance, are somewhat low and do not reflect the seriousness of the trafficking process. There are discrepancies in punishments between Northern Ireland and the rest of the United Kingdom. Further, the current licensing scheme for gangmasters under the Gangmasters (Licensing) Act 2004 is problematic as it does not apply to all relevant industries and business sectors. In summary, although Northern Ireland has come a long way in implementing various measures against human trafficking, their effectiveness can be called into question at the current moment.

Based on the analysis of responses to human trafficking currently being implemented in Northern Ireland, NICEM proposes nine key recommendations for a more effective and efficient framework:

1. There should be a single consolidated statute on human trafficking. The complex and piecemeal nature of the current legislative framework makes it difficult for the relevant stakeholders to understand what is expected of them in implementing action against human trafficking. A single statute can rectify this problem by providing coherence and clarity.
2. The current sentencing guidance on human trafficking should be revised to reflect the severity of this crime and the relevant regional and international standards on the adoption of “effective, proportionate and dissuasive” penalties.
3. Objective research and assessment of the current law enforcement practice must be conducted so that relevant authorities can clearly identify examples of good practice and areas of concern for further improvement.
4. More proactive participation of NGOs in the NRM should be facilitated in Northern Ireland. Some of them have good expertise and experience on human trafficking and are equally capable of identifying its victims properly.
5. The Northern Ireland Government must make more active use of confiscated criminal proceeds and should consider establishing a trust fund in order to provide much needed support to victims of human trafficking. Such support should not depend on certain conditions such as co-operation with the law enforcement authorities.

6. Provision of a reflection period and temporary residence permit, a right of appeal against CAs' decisions as well as non-criminalisation of victims should be incorporated into legislation in order to establish clear obligations and accountability.
7. In order to maximise the deterrence effect, the Northern Ireland Government should tighten up the punishment regime for those who actually exploit victims by increasing sentences for relevant offences and closing legislative gaps which exist in other parts of the United Kingdom.
8. Awareness-raising should be strengthened in order to prevent people in Northern Ireland from trafficking and exploiting vulnerable victims. In so doing, the Northern Ireland Government should consider innovative ways to reach out to the actual or potential traffickers and exploiters.
9. The Northern Ireland Government should appoint an independent anti-trafficking co-ordinator or rapporteur who could facilitate effective action against human trafficking by working closely with relevant stakeholders at the local, national and international levels.

### **Relevant International & Regional Standards**

There are a few key regional and international standards that Northern Ireland must take into consideration in implementing action against human trafficking. The first is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* attached to the *United Nations Convention against Transnational Organised Crime*<sup>1</sup> (Trafficking Protocol). It provides a definition of the crime in Article 3,<sup>2</sup> and its key aims are to 1) prevent and combat trafficking; 2) protect and assist victims; and 3) promote international co-operation.<sup>3</sup> While this legal instrument marks an important step forward for implementing effective action against the practice at the global level, it has been criticised mainly for the fact that it lacks a human rights perspective. This is evidenced in the weak nature of provisions relating to protection of victims.<sup>4</sup>

This lack of human rights considerations in the Trafficking Protocol was rectified when the Council of Europe adopted the *Convention on Action against Trafficking in Human Beings* in 2005<sup>5</sup> (Council of Europe Convention). Unlike the Trafficking Protocol, this instrument recognises that the protection of victims and their human rights is the paramount objective in its Preamble. This is reflected further in provisions which establish concrete obligations on State Parties, including the United Kingdom, to adopt/implement measures ranging from proper identification of victims and protection of their private life to provision of medical assistance and

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<sup>1</sup> A/RES/55/25 (2001).

<sup>2</sup> Trafficking is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

<sup>3</sup> Article 2.

<sup>4</sup> For instance, Article 6 obliges State Parties simply to “consider” and “endeavour to implement” measures for physical, psychological and social recovery of victims.

<sup>5</sup> CETS No. 197 (2005).

temporary residence permits.<sup>6</sup> These provisions are far more extensive than the Trafficking Protocol, and this is to be welcomed from a human rights perspective.

Finally, the *EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims*<sup>7</sup> (EU Directive) is the most recent legal instrument on human trafficking applicable to the UK and Northern Ireland. Compared to the previous instrument, the Council Framework Decision 2002/629/JHA on Combating Trafficking in Human Beings,<sup>8</sup> the EU Directive is more human rights friendly. It has the provisions relating to protection of victims<sup>9</sup> and makes it clear that assistance should not be conditional upon their willingness to co-operate with the law enforcement authorities.<sup>10</sup> Non-prosecution of victims, who are forced to commit crimes such as immigration offences and drug trafficking, is also provided for.<sup>11</sup> This instrument complements Article 5(3) of the EU Charter of Fundamental Rights<sup>12</sup> which obliges States to prohibit trafficking.

Although the wording and the contents of provisions are not exactly identical, three key obligations can be identified from these European and international instruments: obligations to 1) prohibit/prosecute trafficking/traffickers, 2) protect victims, and 3) prevent trafficking. These obligations have also been identified as the key priorities in the recently adopted *EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-2016*.<sup>13</sup> The United Kingdom and Northern Ireland therefore must observe and implement these obligations through legislative

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<sup>6</sup> Chapter III.

<sup>7</sup> OJ L 101/1, 15 April 2011.

<sup>8</sup> OJ L 201/1, 1 August 2002.

<sup>9</sup> Articles 11-17.

<sup>10</sup> Article 11(3).

<sup>11</sup> Article 8.

<sup>12</sup> OJ C 364/1, 18 December 2000.

<sup>13</sup> COM(2012) 286 final, 19 June 2012.



and other means. What follows is an analysis of the extent to which this has been done to date.

### **Prosecution of Trafficking and Related Offences**

There are several laws that are relevant to the trafficking of human beings in Northern Ireland. The most important are the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 which criminalise trafficking for sexual and labour exploitation respectively.<sup>14</sup> These offences carry a maximum of 14 years' imprisonment. The sentence is somewhat higher than other European counterparts,<sup>15</sup> and therefore it may be stated that the United Kingdom and Northern Ireland generally comply with their obligation to prohibit trafficking. These two statutes were recently amended by the Protection of Freedoms Act 2012. Internal trafficking (e.g. trafficking of victims from London to Belfast) is now established as a criminal offence in England and Wales and the nationality principle is firmly established.<sup>16</sup> This is relevant where a British national carries out trafficking outside the United Kingdom. While these changes have been made to implement the EU Directive noted above,<sup>17</sup> they have no legal effect in Northern Ireland due to devolution of criminal justice matters. In order to rectify this, the Department of Justice Northern Ireland issued a consultation document on amending the relevant

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<sup>14</sup> Sections 57-60 of the 2003 Act and Section 4 of the 2004 Act as amended.

<sup>15</sup> For example, the maximum penalty in Finland, Germany, the Netherlands and Sweden is 10 years' imprisonment.

<sup>16</sup> Sections 109 and 110.

<sup>17</sup> Article 10 in particular.

statutes in April 2012,<sup>18</sup> and a Criminal Justice Bill introduced in June contains similar provisions as the Protection of Freedoms Act 2012.

Although the current legislative framework may be regarded as sufficient, its enforcement displays some concerns. To begin with, there have only been a small number of prosecutions and convictions in Northern Ireland.<sup>19</sup> Between January 2007 and June 2012, the Public Prosecution Service (PPS) received 14 cases on human trafficking and related offences involving 27 suspects.<sup>20</sup> Of these, prosecution decisions were made in 10 cases (21 suspects).<sup>21</sup> This may be compared with approximately 600 prosecutions in England and Wales during the same period.<sup>22</sup> What is more, there have only been two convictions for trafficking offences to date in Northern Ireland,<sup>23</sup> compared to 49 convictions in England and Wales between 2009 and 2011.<sup>24</sup> This lack of prosecution and conviction is due to a number of reasons. It may be that there are a fewer instances of trafficking in Northern Ireland compared to the rest of the United Kingdom. The clandestine and sophisticated nature of trafficking operations also makes it difficult to detect and investigate the cases of human trafficking. In addition, unwillingness of trafficked victims to assist the law enforcement authorities also undermines effective prosecution as they are not able to obtain useful information or evidence. This is further exacerbated by measures such as deportation and repatriation facilitated by the UK Border Agency. Further, some concerns were expressed in relation to the

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<sup>18</sup> Department of Justice Northern Ireland, *Amendments to the Sexual Offences Act 2003 & the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 In Order to Comply with the EU Directive 2011/36/EU on Preventing and Combating Trafficking and Protecting Its Victims* (April 2012).

<sup>19</sup> Northern Ireland Assembly, *Human Trafficking in Northern Ireland (Research and Information Service Research Paper)*(June 2012), p. 27.

<sup>20</sup> Information provided by the Public Prosecution Service at the meeting held by the Northern Ireland Assembly All Party Group on Human Trafficking on 12 June 2012.

<sup>21</sup> *Ibid.*

<sup>22</sup> Home Office, *Report on the Internal Review of Human Trafficking Legislation* (May 2012), p. 8.

<sup>23</sup> *Matyas Pis*, [2012] NICC 14; and *Chen and Others*, [2012] NICC 26.

<sup>24</sup> Home Office, *supra*, p. 9.

level of expertise and training on human trafficking among the concerned agencies.<sup>25</sup>

There is therefore scope for improvement in the law enforcement practice.

Another pressing issue facing Northern Ireland is sentencing. The recent case of *Matyas Pis*<sup>26</sup> is a case in point. He was found guilty of trafficking two women from Dublin to Belfast for the purpose of sexual exploitation and received 3 years' imprisonment for trafficking offences. The court's decision was based upon the Sentencing Guideline on Sexual Offences Act 2003 issued by the Sentencing Guidelines Council in 2007.<sup>27</sup> It provides that a starting point for sentencing in relation to trafficking carried out with coercion of victims is 6 years' imprisonment, whereas 2 years' imprisonment is regarded as such for the act done without such an element.<sup>28</sup> Finding that there was no coercion and active control of two victims involved in the present case, the court concluded that 3 years was appropriate. Nevertheless, the actual time to be spent in prison was set as 18 months (followed by 18 months on licence). While it is understandable that matters such as a guilty plea, the defendant's previous good character and no risk of reoffending were taken into consideration, a question should be raised as to whether such a sentence can serve as effective deterrence in practice.

There are a number of problems and ambiguities in the 2007 Guideline itself. For instance, the starting points for trafficking with/without coercion are not arguably appropriate, particularly because traffickers transport victims with a clear intention to exploit them or have full knowledge that they will be exploited by others.<sup>29</sup> It is also the case that there is no clear guidance as to the nature and extent of coercion.

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<sup>25</sup> Northern Ireland Assembly, *supra*, p. 28.

<sup>26</sup> *Supra*.

<sup>27</sup> Sexual Offences Act 2003: Definitive Guideline (2007).

<sup>28</sup> Part 6D.

<sup>29</sup> See the definitions of trafficking provided under the 2003 and 2004 Acts.

Despite the 6 year starting point, the Guideline also states that a sentence can range from 4 to 9 years, creating further confusion as to what form(s) coercion should attract sentences higher or lower than the 6 year threshold. In addition, the Guideline does not explicitly recognise the involvement of criminal groups/gangs in trafficking as an aggravating factor. This is problematic as their involvement makes the crime more sophisticated and dangerous and increases the vulnerability of victims. Further, there is no mention of corruption by public officials as an aggravating factor. This does not meet the requirement set by Article 4(3) of the EU Directive. Some of these and other ambiguities were recently recognised by Justice Stephen of the Northern Ireland Crown Court in *Chen and Others*,<sup>30</sup> highlighting difficulties faced by the judiciary in determining appropriate sentences for trafficking offences. It is therefore apparent that there is an acute need to revise the current Guideline so that it reflects the severity of the offence and the relevant regional and international standards which oblige the United Kingdom and Northern Ireland to adopt “effective, proportionate and dissuasive” penalties.<sup>31</sup>

In Northern Ireland, the Director of the Public Prosecution Service can refer cases involving unduly lenient sentences to the Court of Appeal for its review within 28 days under Part IV of the Criminal Justice Act 1988 as amended by Section 41 of the Justice (Northern Ireland) Act 2002. The Criminal Justice Act 1988 (Review of Sentencing) Order 2006 has extended the range of offences to which the 1988 Act applies, including human trafficking under the Sexual Offences Act 2003. However, trafficking for labour exploitation under the Asylum and Immigration (Treatment of

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<sup>30</sup> *Supra*.

<sup>31</sup> See for instance, Article 4(4) of the EU Directive.

Claimants, etc.) Act 2004 is not included.<sup>32</sup> It has recently been confirmed that the United Kingdom and Northern Ireland Governments will rectify this anomaly in the near future,<sup>33</sup> and this is to be welcomed.

In analysing the Northern Ireland's obligation to prosecute and punish trafficking, it is also important to stress that the concerned authorities need to work closely with their counterparts in the Republic of Ireland. The case of *Matyas Pis* noted above amply demonstrates that trafficking happens not only within Northern Ireland, but also across the border to/from the Republic. This means firstly that the legislative framework should be aligned as closely as possible between the two jurisdictions to facilitate effective cross-border co-operation. This however, is not the case in practice. The relevant legislation in the Republic is the Criminal Law (Anti-Trafficking) Act 2008. Compared to the UK/NI legislation, this Act provides a clearer and more detailed definition of human trafficking in line with the relevant regional and international standards. One of the unique aspects of this definition is the inclusion of "provision of accommodation and employment" as part of the trafficking definition, in addition to the recruitment, transfer or harbouring.<sup>34</sup> However, different understanding of trafficking can hamper proper identification of the crime and its victims as well as implementation of measures such as the European Arrest/Evidence Warrants. Another important aspect is the punishment regime. Trafficking carries a maximum of life imprisonment in the Republic,<sup>35</sup> compared to 14 years in the United Kingdom and Northern Ireland as noted above. The problem here is that the same conduct can entail different punishments depending on where a trafficker is arrested and prosecuted, and this raises some concerns from a human

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<sup>32</sup> Public Prosecution Service for Northern Ireland, *Policy for Prosecuting Cases of Human Trafficking* (June 2012), p. 36

<sup>33</sup> Home Office, *supra*, p. 11.

<sup>34</sup> Section 1.

<sup>35</sup> Sections 3 and 4.

rights perspective. All of these require a higher level of co-operation and communication among the law enforcement authorities and judiciary in both jurisdictions.

**Recommendations:**

1. There should be a **single, consolidated statute on human trafficking**. The complex and piecemeal nature of anti-trafficking laws in the United Kingdom and Northern Ireland is undermining the action against human trafficking as it is difficult for all of those concerns to understand various obligations imposed upon them. A single statute will remedy this problem as it will provide clarity and coherence and serves as good guidance for the relevant stakeholders. Other common law jurisdictions including Ghana,<sup>36</sup> Ireland,<sup>37</sup> Jamaica,<sup>38</sup> Malaysia,<sup>39</sup> Pakistan,<sup>40</sup> and the United States of America<sup>41</sup> enacted specific legislation on human trafficking, and Northern Ireland should follow suit.

2. **The current Sentencing Guideline on human trafficking should be revised.** It is not at all clear and creates confusions among judges. Lenient and inappropriate sentences will not act as strong deterrence and this will undermine the ongoing effort to prevent trafficking.

3. **Objective research and assessment of the current law enforcement practice** should be conducted by the Criminal Justice Inspection Northern Ireland established

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<sup>36</sup> Human Trafficking Act 2005.

<sup>37</sup> 2008 Act, *supra*.

<sup>38</sup> Trafficking in Persons Act 2007.

<sup>39</sup> Anti-Trafficking in Persons Act 2007.

<sup>40</sup> Prevention and Control of Human Trafficking Ordinance 2002.

<sup>41</sup> 2000 Act, *supra*.

under the Criminal Justice (Northern Ireland) Act 2002 in order to identify examples of good practice and areas of concern for further improvement. This body can also facilitate better co-ordination among the relevant statutory, voluntary and community organisations.

### **Protection of Victims**

The next key obligation is the protection of victims. Given the gross violation of human rights many victims experience during the course of their journey and upon arrival in destination through sexual and labour exploitation, the United Kingdom as well as Northern Ireland must provide sufficient protection. The first obligation relates to proper identification of victims, which is a starting point for providing protection.<sup>42</sup> In 2009, the National Referral Mechanism (NRM) was introduced to meet this obligation stipulated under Article 10 of the Council of Europe Convention. In order to take advantage of the NRM, so called first responders<sup>43</sup> have to refer a victim to the Competent Authorities (CAs), which consist of the UK Human Trafficking Centre and the UK Border Agency. Upon referral, these CAs<sup>44</sup> have 5 days to decide whether there are reasonable grounds to believe that the individual referred is a victim of trafficking. If a positive decision is made, then the victim can receive initial assistance such as safe accommodation and a recovery period of 45 days. During this period, the CAs will issue conclusive decisions as to whether individuals are indeed trafficked victims. If these victims are willing to co-operate

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<sup>42</sup> O [2008] EWCA Crim 2835.

<sup>43</sup> They include the local authorities, the police, UK Human Trafficking Centre, and civil society organisations such as the Poppy Project, Migrant Helpline and Kalayaan.

<sup>44</sup> Currently there are 120 trained staff who take part in the NRM. HC Deb, 23 May 2012, vol. 545, col. 674W.

with the law enforcement authorities, they can be granted a temporary residence permit of up to 12 months in the first instance.<sup>45</sup>

Although there is no doubt that some progress has been made to facilitate proper identification of victims, the current system is still inadequate. It is commendable that some NGOs are designated as first responders. However, their involvement in the NRM is somewhat limited in Northern Ireland. Migrant Help, which deals with trafficking for labour exploitation, is recognised as one of the first responders, but other key organisations such as the Women's Federation Northern Ireland are not. In addition, while the recovery period of 45 days is longer than what is provided for under the Council of Europe Convention,<sup>46</sup> it is rather unrealistic to expect the victims of trafficking, who have potentially suffered from gross violations of human rights, to recover from their ordeals very quickly. Other EU Member States such as Italy provides for a 3 month initial period, and this has been recommended by various stakeholders, including the UK Parliamentary Joint Committee on Human Rights.<sup>47</sup> Further, conducting interviews with the victims for conclusive determination during the reflection period is inappropriate as they have to recount their experience and this can add further distress and trauma. Also, there is no formal process of appeal or review of the decisions made by the CAs.<sup>48</sup> Although the victims can challenge their decisions through judicial review, this is often lengthy and expensive. It should also be noted that judicial review relates to the conduct of the CAs and is not designed to re-examine the merits of each case.<sup>49</sup> This can put

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<sup>45</sup> Serious Organised Crime Agency at <<http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>> (Last visited 24 July 2012).

<sup>46</sup> A minimum of 30 days under Article 13.

<sup>47</sup> Joint Committee on Human Rights, *Human Trafficking: Twenty-Sixth Report of Session 2005-2006*, para. 203.

<sup>48</sup> Ant-Trafficking Monitoring Group, *Wrong Kind of Victim?* (June 2010), pp. 41-42.

<sup>49</sup> *Ibid.*, p. 42.



the victims at a more disadvantaged position if the facts or individual circumstances are misinterpreted, for instance.

Finally, provision of support based on the willingness of victims to co-operate is problematic from a human rights perspective and not in line with the Council of Europe Convention<sup>50</sup> and the EU Directive.<sup>51</sup> In a recent case *In the Matter of an Application by W for Judicial Review*, the High Court of Northern Ireland, in citing *Rantsev v Cyprus and Russia*<sup>52</sup> before the European Court of Human Rights, affirmed that:

A breach of the obligation to protect victims of trafficking will arise if:

- a) The State was aware or ought to have been aware of circumstances giving rise to a credible suspicion of that an individual had been, or was at a real and immediate risk of being, trafficked; and
- b) The authorities fail to take appropriate measures within the scope of their powers to remove an individual from that situation or risk.<sup>53</sup>

By attaching the co-operation as a condition for protection, the United Kingdom and Northern Ireland may be breaching this obligation as they are not necessarily removing the risk from the victims.

In terms of specific assistance and protection measures provided to victims, there are three main organisations which provide direct assistance: Women's Aid Federation Northern Ireland (for female victims), Migrant Help (for male victims) and Northern Ireland Health and Social Care Trusts (for child victims).<sup>54</sup> While these service providers receive some financial assistance from the Northern Ireland Government, they are still under-staffed and resourced,<sup>55</sup> and there is an acute need

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<sup>50</sup> Article 12(6).

<sup>51</sup> Article 11(3).

<sup>52</sup> Application No. 25965/04, Judgment of 7 January 2010.

<sup>53</sup> [2012] NIQB 37.

<sup>54</sup> Northern Ireland Assembly, *supra*, p. 22

<sup>55</sup> Anti-Trafficking Monitoring Group, *supra*, pp. 131-132.

for improvement in this area. The effective use of the confiscated criminal proceeds is a key to solving this problem, and the United Kingdom and Northern Ireland should ensure that these are effectively used to protect victims. In 2009, for instance, a total of £28,000 in cash and £150,000 in other assets were seized and/or frozen.<sup>56</sup> Of these, £25,000 was allocated to provide support to victims.<sup>57</sup> More money should be allocated, and wider publicity of this is also necessary in order to send a clear message that traffickers will not be able to benefit from their activities. Finally, reflection periods and temporary residence permits for victims are still given on a discretionary basis in Northern Ireland and the United Kingdom. This gives enormous powers on the part of the CAs, and it is extremely difficult to hold them accountable as noted elsewhere. There is therefore a need to incorporate these into legislation in the future for clarity and certainty.

One final point which might be considered further is non-criminalisation of victims of trafficking. It is imperative that the victims who are forced to commit criminal offences such as drug production and trafficking, immigration offences (illegal entry and stay, possession of false identity documents), as well as offences associated with prostitution (loitering/soliciting) are not prosecuted or punished. Currently the PPS cannot offer immunity from prosecution due to its statutory obligation under the Justice (Northern Ireland) Act 2002, but has discretion not to prosecute trafficked victims based upon the public interest test.<sup>58</sup> In addition, a general defence of duress can be relied upon.<sup>59</sup> The courts can also rely on the principle of abuse of process and stay criminal proceedings if they consider that a

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<sup>56</sup> Organised Crime Task Force, *2009 Annual Report & Threat Assessment*, p. 19.

<sup>57</sup> *Ibid.*, p. 20.

<sup>58</sup> *R v LM* [2010] EWCA 2327.

<sup>59</sup> See, for instance, CPS Guidance on Human Trafficking and Smuggling, available at <[http://www.cps.gov.uk/legal/h to k/human\\_trafficking\\_and\\_smuggling/#human](http://www.cps.gov.uk/legal/h to k/human_trafficking_and_smuggling/#human)> (last accessed 24 July 2012). See also *R v O*, *supra*.

decision of the prosecutorial authority is inappropriate.<sup>60</sup> However, the inclusion of a provision on non-criminalisation of trafficked victims in legislation can further strengthen the protection of victims and would be more in line with Article 8 (Non-Prosecution or Non-Application of Penalties to the Victims) of the EU Directive as well as Article 26 of the Council of Europe Convention. It is worth noting in this regard that Finland,<sup>61</sup> Malaysia,<sup>62</sup> South Africa,<sup>63</sup> Spain,<sup>64</sup> and the United States of America<sup>65</sup> have statutory provisions on non-criminalisation of victims, and Northern Ireland and the United Kingdom should follow suit.

#### **Recommendations:**

**4. More proactive participation of NGOs in the NRM should be facilitated in Northern Ireland through designation of key organisations, such as the Women's Federation Northern Ireland, as the first responders.** These NGOs have the right expertise and experience in human trafficking and are equally capable of identifying its victims. As they are often fearful of law enforcement action, victims are more likely to approach these NGOs in the first instance to seek support. Organisations such as Kalayaan and the Poppy Project are designated as the first responders in

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<sup>60</sup> *R v N; R v LE* [2012] EWCA Crim 189.

<sup>61</sup> Section 7 (2) on Border Offences of the Criminal Code of Finland provides that "(a) foreigner who has committed the act referred to in subsection 1 (immigration offences) due to the fact that he or she has been subjected to trafficking in human beings... shall not be sentenced also for a border offence."

<sup>62</sup> Section 25 of the Anti-Trafficking in Persons Act 2007.

<sup>63</sup> Section 71(5) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007. This goes further to include other offences. It says: "(a) person who has been trafficked is not liable to stand trial for any criminal offence, including any migration-related offence, which was committed as a direct result of being trafficked."

<sup>64</sup> Article 59 Organic Law of Spain 4/2000 on the rights and freedoms of aliens in Spain and on their social integration.

<sup>65</sup> According to Section 102(b)(19) Victims of Trafficking and Violence Protection Act 2000, "victims of severe forms of trafficking should not be inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts committed as a direct result of being trafficked, such as using false documents, entering the country without documentation, or working without documentation."

England, and there is no reason why the Northern Ireland Government cannot do the same.

5. The Northern Ireland Government must make more **active use of confiscated criminal proceeds** and consider **establishing a trust fund for victims**, which would consist not only of criminal proceeds, but also of donations from local businesses and other stakeholders. Their engagement can ensure more effective awareness-raising among the potential users of trafficked victims. The relevant stakeholders should also be made aware of the Small Grant Facility jointly launched by the United Nations Office of Drugs and Crime and the Westminster All Party Group on Human Trafficking on March 2011, as part of the United Nations Voluntary Trust Fund for Victims of Human Trafficking which was established in 2010.<sup>66</sup>

6. **Provision of a reflection period and temporary residence permit, a right of appeal against CAs' decisions, as well as non-criminalisation of victims should be incorporated into legislation** in order to establish clear obligations and accountability.

### **Prevention**

One of the most pressing issues in terms of prevention of trafficking in Northern Ireland is to address its end purposes by reducing the demand for trafficked people. In addition to prosecution and punishment of trafficking offences, there are a number of statutes which are designed to curb such demand in Northern Ireland. For instance, the Coroners and Justice Act 2009 prohibits slavery and forced labour with a maximum of 14 years' imprisonment. This statute applies to all form of

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<sup>66</sup> *Meeting Report of the Launch of the 2011 Small Grants Facility of the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons* (March 2011).

exploitation experienced by victims of trafficking. In relation to sexual exploitation, Articles 62-64 of the Sexual Offences (Northern Ireland) Order 2008 criminalise the acts of causing/inciting prostitution, controlling prostitution for gain, and keeping/managing a brothel with a maximum of 7 years' imprisonment. Another important piece of legislation is the Policing and Crime Act 2009 which has introduced an offence of paying for sexual services from those subjected to force (i.e. trafficked victims) with a maximum penalty of a £1,000 fine.<sup>67</sup> In relation to labour exploitation, one of the important legislation is the Gangmasters (Licensing) Act 2004. This creates an offence of acting as a gangmaster without a proper license with a maximum of 10 years' imprisonment under Section 12(4). In addition, Section 21 of the Immigration, Asylum and Nationality Act 2006 criminalises the act of knowingly employing illegal migrants, attracting 2 years' imprisonment upon conviction. It also provides for a civil penalty of £10,000 per illegal migrant.<sup>68</sup>

While these statutory provisions are important in addressing the demand for sexual/labour exploitation in Northern Ireland, there are a number of problems simultaneously. For instance, 7 years' imprisonment for causing/inciting prostitution, controlling prostitution for gain and keeping/managing a brothel are not necessarily appropriate because of the additional elements of coercion, physical/sexual violence and other gross violations of human rights experienced by the victims of trafficking. This sentence therefore should be increased up to 14 years if the offence involves trafficked victims. This should also apply to the offence of "soliciting" under the Sexual Offences (Northern Ireland) Order 2008 (as amended by Section 20 of the Policing and Crime Act 2009), if a client solicits sexual services from a trafficked

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<sup>67</sup> Section 15 amends the Sexual Offences (Northern Ireland) Order 2008. The Department of Justice and Equality in the Republic of Ireland issued a consultation document in June 2012 which touches upon this as well. See *Discussion Document on Future Direction of Prostitution Legislation*.

<sup>68</sup> Section 15.

victim. A question may also be asked whether a £1,000 fine under the Policing and Crime Act 2009 serves as strong deterrence. There are cases where clients may purchase sexual services with full knowledge that the providers are trafficked victims. An added problem is that this is a summary offence and a limitation of 6 months applies.<sup>69</sup> Consequently, it makes sense to increase the level of punishment, possibly with the imposition of a custodial sentence. In Finland, for instance, the offence of knowingly using sexual services of trafficked victims carries a maximum of 6 months' imprisonment<sup>70</sup> and a similar sentence can be imposed in Northern Ireland. In addition, other measures such as Sex Offender Registration might be considered particularly for repeat offenders.

In relation to labour exploitation, there is much scope to strengthen the current legislative framework. For instance, the system of licensing employers under the Gangmasters (Licensing) Act 2004 is not adequate. Currently this applies to a food production sector (agriculture, shellfish and packing and processing). This means that trafficked victims working in other industries such as garment production, domestic work and hospitality are more vulnerable to abuse and exploitation. There is therefore scope to extend the current system to other relevant industries. Further, the system operates in rural but not urban areas, and this needs to be rectified for consistency. In addition, 10 years' imprisonment for acting as a gangmaster without a proper license might be regarded as relatively short, if they are dealing with the trafficked victims. Another point to note is that a summary conviction for this offence in Northern Ireland attracts a maximum of 6 months' imprisonment, while it is 12 months in England and Wales.<sup>71</sup> Similarly, entering into arrangements with

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<sup>69</sup> Article 19 of the Magistrates' Court (Northern Ireland) Order 1981.

<sup>70</sup> Chapter 20, Section 8 of the Finnish Criminal Code as amended in 2006.

<sup>71</sup> Section 12.

unlicensed gangmasters entails a summary conviction of up to 6 months' imprisonment in Northern Ireland under Section 13 (51 weeks in England and Wales). There is no reasonable justification for these anomalies among different jurisdictions, and therefore the Northern Ireland Government should consider further amendment in this regard.

Further, the 2006 Act does not apply to those who enter into the United Kingdom legally such as EU nationals and possibly other groups, including those who seek asylum.<sup>72</sup> This gap needs to be addressed so that the focus is placed upon one's exploitation rather than immigration status. It should also be noted that illegal migrants are generally more vulnerable to abuse and exploitation, as they are reluctant to report to the police due to a fear of law enforcement action against them for breaching the UK immigration laws and regulations. Therefore, the imprisonment of 2 years is too lenient. Further, a summary conviction for this offence carries a maximum of 6 months' imprisonment in Northern Ireland, and this is different for England and Wales (12 months).<sup>73</sup> Finally, there is a legislative gap in relation to summary conviction for the offence of slavery and forced labour under the 2009 Act, where the offence carries only 6 months' imprisonment in Northern Ireland when it is 12 months in England and Wales.<sup>74</sup> These legislative gaps must be rectified as soon as possible for consistency across all jurisdictions.

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<sup>72</sup> In *Naillie and Another*, [1993] 1 All ER 75, the Court of Appeal held that people who disembarked without a right of entry were not automatically illegal entrants. In this case, an entrant who claimed asylum while still within the designated area was accepted as such.

<sup>73</sup> Section 21.

<sup>74</sup> Section 71.

### **Recommendations:**

**7. The Northern Ireland Government should tighten up the punishment regime for those who exploit trafficked victims** to maximise a deterrence effect by increasing sentences for relevant offences and closing gaps evidenced in other parts of the United Kingdom. This should be coupled with stronger naming and shaming in the local/national news and media.

**8. More effective awareness-raising should be instituted** in Northern Ireland. The Blue Blindfold Campaign was widely regarded as ineffective as it failed to target those who are likely to be in contact with trafficked victims. In Northern Ireland, the Government claims that the Campaign was recognised by approximately 500,000 people, constituting 35% of the entire population.<sup>75</sup> While it is impossible to measure the true effectiveness from a single campaign, there are lessons to be learned. If the Government is to reach out to the actual/potential traffickers and exploiters in Northern Ireland, then it should consider **more innovative/creating means** to target them. One example would be to place an advert in so-called “Lads’ Magazines” such as *Nuts*, and *Zoo*, as well as in tabloid newspapers or to make active use of social networking sites such as Facebook.<sup>76</sup>

### **Final Recommendation to Fulfil 3P Obligations:**

**9. A creation of an independent anti-trafficking co-ordinator or rapporteur** should be seriously considered. The main task of this office would be to facilitate a co-ordinated and consolidated response to human trafficking by working closely with

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<sup>75</sup> Organised Crime Task Force, *2011 Annual Report & Threat Assessment*, p. 34.

<sup>76</sup> A good example of this is “No More Traffik On Our Street” Campaign instituted in Northern Ireland by Members of Civil Society (<http://www.nomoretraffik.com/>).



relevant stakeholders in Northern Ireland and the United Kingdom. In so doing, the post would ensure that 3P obligations explored in this paper are implemented effectively and without delay. S/he would also facilitate effective awareness-raising among the general public and also be expected to work with relevant regional and international partners such as the European Union and the United Nations. The UK Government currently does not support the establishment of a rapporteur as it believes that the Inter-Departmental Ministerial Group on Human Trafficking fulfils its functions.<sup>77</sup> Although the Group can co-ordinate activities across relevant government departments, this is a political body and therefore its work may not be perceived as totally independent or impartial. Moreover, it only meets twice a year,<sup>78</sup> and it is doubtful whether the Group can sufficiently and effectively address numerous issues arising from human trafficking. Therefore, the Northern Ireland Government has a unique opportunity to take the lead in establishing an independent rapporteur which may be used as a model for other jurisdictions in the United Kingdom. A regional rapporteur may also be regarded as appropriate as he/she would be able to take local issues into consideration more thoroughly and devise an appropriate response.

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<sup>77</sup> Statement by Damian Green (Minister of State for Immigration), HC Deb, 13 June 2012, vol. 546, col. 481W. This Group consists of the Home Office, Ministry of Justice, Department for Education, Department of Health, Department for Business, Education and Skills, Department for Work and Pensions, Department for Communities and Local Government, Department for International Development, Foreign and Commonwealth Office, Justice Department (Scotland), Department for Communities and Local Government (Wales), Department of Justice (Northern Ireland), and Office of Solicitor-General. See HC Deb, 22 March 2012, vol. 542, col. 814W-815W.

<sup>78</sup> Home Office, *supra*, p. 8.

# Northern Ireland Housing Executive

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**From:** Lucas, Maureen <Maureen.Lucas@NIHE.GOV.UK>  
**Sent:** 03 September 2012 15:18  
**To:** +Comm. Justice Public Email  
**Subject:** FW: CRIMINAL JUSTICE BILL

Dear Ms Darragh,

**Criminal Justice Bill**

Thank you for your letter of 11 July 2012 regarding the consultation period in relation to the above Bill.

As the broad areas covered by the bill - together with the workings of the Criminal Justice system in general - fall outside the Housing Executive's functions and area of expertise, we do not propose to comment on any of the substantive issues raised.

I would, however, like to thank you for providing the Housing Executive with the opportunity to comment.

Yours sincerely



John McPeake  
**Chief Executive**

\*\*\*\*\* IMPORTANT MESSAGE \*\*\*\*\*

The contents of this email from the Northern Ireland Housing Executive do not represent the expressed view of the Housing Executive unless that is clearly stated. It is intended only for the person(s) to whom it is addressed and is confidential. The Housing Executive does not accept any liability whatsoever for its contents (including attachments), usage or onward transmission. It may also be legally privileged and subject to internal monitoring.

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# Northern Ireland Human Rights Commission



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## Response on the Criminal Justice Bill 2012

### Summary

- D. The Commission broadly welcomes the Criminal Justice Bill 2012, in particular the provisions relating to human trafficking. The provisions of the Bill relating to the sex offender register and the fingerprint and DNA retention framework are intended to ensure that both systems do not unduly interfere with an individual's right to private life.
- C. The Commission has reviewed the proposed procedure whereby individuals who have been placed on the sex offender register may apply to the Chief Constable or on refusal to the Crown Court to be removed from the register on grounds that they no longer pose a threat to the public. This procedure acknowledges the potential for rehabilitation whilst ensuring protection for the public. The Commission suggests a number of issues regarding procedural matters which the Committee may wish to consider.
- B. The Commission welcomes the proposed reforms of the fingerprint and DNA retention framework and encourages the Committee for Justice to consider in detail the proportionality of each aspect of the proposals, in particular we encourage the Committee to consider:
1. Whether the indefinite retention of fingerprints and DNA profiles of all adults convicted of a recordable offence is fair and proportionate given the absence of a process whereby an individual can apply to have their fingerprint and DNA profile deleted.
  2. Whether provision for the retention of fingerprint and DNA profiles of individuals charged or arrested with a qualifying offence appropriately safeguards the presumption of innocence.
  3. Whether the provisions of the Bill relating to children are proportionate and in line with Government's obligation contained within the Convention on the Rights of the Child to promote a child offender's sense of dignity and worth.
- D. The Commission welcomes the creation of a number of new offences relating to the trafficking of people for sexual and other forms of exploitation. The EU Directive and the UN Protocol on the Trafficking of Human Beings require a comprehensive approach to the issue of human trafficking. We encourage the Committee to keep this matter under review.

## Introduction

1. The Northern Ireland Human Rights Commission ('the Commission') pursuant to Section 69 (4) of the Northern Ireland Act 1998 advises the Assembly whether a Bill is compatible with human rights.<sup>1</sup> In accordance with this function the following statutory advice is submitted to the Committee for Justice ('the Committee').
2. The Commission bases its position on the full range of internationally accepted human rights standards, including the *European Convention on Human Rights* as incorporated by the *Human Rights Act 1998* and the treaty obligations of the Council of Europe and United Nations systems. The relevant international treaties in this context include;
  - *The European Convention on Human Rights, 1950* ('ECHR') [UK ratification 1951];
  - *The International Covenant on Civil and Political Rights, 1966* ('ICCPR') [UK ratification 1976];
  - *The United Nations Convention on the Rights of the Child, 1989* ('UNCRC') [UK ratification 1991];
  - *The Convention on the Elimination of Discrimination Against Women* ('CEDAW') [UK ratification 1986]
3. The Northern Ireland Executive is subject to the obligations contained within these international treaties by virtue of the United Kingdom's ratification. The Commission, therefore, advises that the Committee scrutinises the proposed Bill for full compliance with international human rights standards.

### Proportionality

4. In addition to introducing a number of new offences relating to human trafficking, this Bill will reform the framework for the notification requirements for sex offenders and the framework for the retention of DNA and fingerprints. The main issue under consideration in respect of both frameworks is whether the proposed amendments will ensure the degree of interference with an individual's right to private life will be proportionate. In this introduction the Commission sets out the rules governing permitted interferences with the right to private life.
5. An individuals' right to private life is protected by Article 17 of the ICCPR and by Article 8 of the ECHR. Article 8 of the ECHR states:
 

*"1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*
6. States are therefore permitted to interfere with the right to private life under certain prescribed conditions. Where Government intends to interfere with the right to private life it must ensure that the various conditions are in place. Through its jurisprudence the European Court has developed a three-part enquiry which Governments and legislators can adopt when determining if a particular measure is human rights compliant.<sup>2</sup> The aspects of this enquiry are:
  1. There must be a legal basis for the interference
  2. It must pursue a legitimate aim

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1 Northern Ireland Act 1998, s.69 (4)

2 *Klass v Germany*, (App. 5029/71), 6 September 1978

3. The limitation on the right must in all the circumstances be necessary in a democratic society – on an assessment of all relevant facts it must be proportionate
7. The most complicated aspect of the enquiry is the assessment of whether the measure is proportionate and necessary in a democratic society. This is the principal issue under consideration with respect to both the sex offender notification arrangements and the DNA retention framework.
8. In assessing the issue of proportionality the Committee must ensure that the reforms are grounded on a solid evidential basis which demonstrates that the measures will achieve the legitimate aims which they pursue without arbitrarily impacting on individuals' human rights.

#### **Sex Offender CL 1 - 4**

9. The Commission has reviewed the provisions of the Bill relating to the notification requirements placed on sex offenders. This is laid down in law and pursues the legitimate aim of protecting the public. The introduction of a procedure which will allow those under notification requirements to apply to the Chief Constable, and if they are unsuccessful to the Crown Court, to have their notification requirements discharged on the grounds that they are no longer a danger to the public, appears to ensure that the interference with the individual's right to private life is proportionate.
10. In considering the proportionality of this measure it is important to note the risk posed to the public.<sup>3</sup> The risk of harm to the public posed by sex offenders is significant and protective measures are required. International human rights law places various positive obligations on states to protect citizens from harm. There are specific obligations in respect of vulnerable groups. The UN Committee on the Elimination of Discrimination Against Women have made specific reference to states' obligation to protect women against sexual violence, the Committee in their General Recommendation No. 19 state:
 

*"States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention"*<sup>4</sup>
11. Furthermore the UNCRC at Article 34 places a specific duty on the State to protect children from all forms of sexual abuse and exploitation.
12. The need to protect the public must be balanced against the rights of the offender. The current rules, under which an offender sentenced to more than 30 months imprisonment for a relevant offence will be included on the register indefinitely runs contrary to Article 10 of the ICCPR, which states that the treatment of offenders should at least contemplate the possibility of rehabilitation. Furthermore the Supreme Court in the case of **R and Thompson 2010** has ruled that the notification requirements represent a disproportionate interference with the offender's right to private life.<sup>5</sup> The amendments contained within this Bill at clause 1 and Schedule 1 appear to address these two issues.
13. The Commission advises that the Committee seek further information from the Department as to how the periods of time which must elapse before a review is permitted have been determined and what evidential basis informed this decision. The provisions with regard to the application process appear to comply with the applicants' right to a fair trial as protected by Article 14 of the ICCPR and Article 6 of the ECHR. The Committee may wish to

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3 The Commission has consistently raised concerns regarding the effectiveness of arrangements for the treatment of sexual offenders. The availability of effective sex offender treatment programmes are essential to limiting the risk that a sex offender will pose on release.

4 General Recommendation No. 19 (11th session, 1992)

5 [2010] UKSC 17

seek information on what assistance will be available to an individual when preparing their application and what forms of evidence the Chief Constable or Crown Court would require.

**Trafficking people for exploitation CL 5 – 6**

14. The Commission notes the intention of clauses 5 and 6 of the Bill to implement EU Directive 2011/36/EU ('EU Directive'), compliance to which must be achieved by 6 April 2013.
15. Article 10(1) (b) of EU Directive requires the UK to establish jurisdiction over offences concerning trafficking in human beings ('THB') where the offender is a UK national, including where the exploitation occurs outside the UK. The Commission welcomes additions by the Bill of section 58A to the Sexual Offences Act 2003 and of subsections 3A, 4A and 4B to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which introduce liability for UK citizens who arrange or facilitate trafficking for the purposes of sexual exploitation or for other exploitation outside of the UK. The Commission welcomes that this extension of jurisdiction includes persons habitually resident in NI at the time of the offence and advises that the Executive must notify the European Commission of this aspect of the extension as required by Article 10(2) of the EU Directive.
16. Furthermore, Article 10(1) (a) of the EU Directive requires the UK to establish jurisdiction over offences concerning THB where the offence is committed 'in whole' within the UK. Similarly, Article 2 of the Council of Europe Convention on Action Against Trafficking in Human Beings states the scope of the Convention to apply to 'all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime'. In this regard, the Commission welcomes the amendments made by the Bill to section 4(2) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which extends the offence of trafficking for other exploitation to apply where a person arranges or facilitates the offence within the UK without the need to demonstrate that the person held the belief that the victim was first trafficked into the UK.
17. Article 10(1) (a) of the EU Directive further requires the UK to establish jurisdiction over offences concerning THB where the offence is committed 'in part' within the UK. The Commission notes that sections 109 and 110 of the Protection of Freedoms Act 2012, which extend to England & Wales, contain provision that a non-UK national will be culpable for the offence of trafficking for sexual, labour and other exploitation under the legislation if 'any part of the arranging or facilitating takes place in the UK'. An equivalent level of jurisdiction has not been contained in the Criminal Justice Bill. By way of example, in the scenario whereby a non-UK national (who is not habitually resident in Northern Ireland), person 'A' whilst in Northern Ireland, arranges via email, telephone or other personal communication for the trafficking of person 'B' from State 1 ('India') to State 2 ('Lebanon'), it appears that person 'A' could be prosecuted in England & Wales but not in NI. The Commission advises the Committee that it may wish to seek clarification on the application, if any, of sections 109 and 110 in NI, and whether or not the outlined scenario is covered by the NI legislative framework.
18. The Commission also notes that the EU Directive requires further implementation before compliance is achieved, particularly in the areas of victims services, protections for the child, and measures to address demand and trusts that the NI Executive is mindful of these obligations which require fulfilment by 6 April 2013. The Commission also refers the Committee to its own scoping study published in 2009 in conjunction with the Equality Commission for NI and the Institute for Conflict Research on 'The Nature and Extent of Human Trafficking in Northern Ireland' which made a number of recommendations.
19. Finally, the Commission notes that the legislative framework which outlines offences concerning THB is particularly complex in NI and already involves reference to the Sexual Offences Act 2003, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Sexual Offences (Northern Ireland) Order 2008 and the Coroners and Justice Act 2009. These provisions are set to be accompanied by the Criminal Justice Bill and a

potential Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. The Commission therefore advises that the Committee may wish to consider either the introduction of a THB legislative guide or a single comprehensive piece of legislation to increase the accessibility and awareness of the crime.

#### **Fingerprint and DNA Retention CL 7 and Schedules 3 & 4**

20. The Commission welcomes the introduction of reforms to the legislative framework governing the retention of fingerprints and DNA to ensure compliance with the European Court of Human Rights ruling in the case of *S and Marper v United Kingdom* [2008] ECHR 1581. In this judgement the Court found that the degree of interference caused by the DNA retention framework with an individuals' right to private life was disproportionate to achieving the legitimate aim of crime prevention. Following an assessment of various aspects of the framework the Court found that the "blanket and indiscriminate nature of the power of retention" of the DNA data of persons suspected, but not convicted, of offences failed to strike a fair balance between the competing public interest of crime prevention, and the private interest of the individual.<sup>6</sup>
21. The Department has clearly been mindful of this judgement in developing these proposals. The Explanatory Memorandum to the Bill states that the Department is seeking "a proportionate balance between the rights of the individual and the protection of the public." The Commission advise that the Committee give detailed consideration to whether the clauses of the Bill meet this objective. The Committee in particular may wish to consider;
- Whether the indefinite retention of DNA profiles of all adults convicted of a recordable offence is fair and proportionate given the absence of a process whereby an individual could apply to have their profile deleted.
  - Whether provision for the retention of DNA profiles of individuals charged or arrested with a qualifying offence appropriately safeguards the presumption of innocence.
  - Whether the provisions of the Bill relating to children are in compliance with the Convention on the Rights of the Child.

#### **Persons convicted of a recordable offence**

22. The fingerprints or DNA profile of an adult convicted of a recordable offence may be retained indefinitely (proposed Article 63F). The Commission advises that the indiscriminate nature of this approach may be considered disproportionate and the Committee may wish to consider whether periods of retention should be staggered depending on the seriousness of the offence. In addition the Committee may wish to consider whether individuals should be able to apply to have their fingerprints and DNA profile deleted under certain circumstances.
23. It is worth recalling that the definition of 'recordable offence' contained within the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989 includes a wide range of offences.
24. The Committee will wish to consider whether this is a proportionate response. It should be noted that neither of the applicants in the **S and Marper case** had been convicted. Therefore the Court did not consider in detail the issue of the retention of DNA of those convicted of a criminal offence. The Court did refer to the Council of Europe Recommendation No. R(87)15, paragraph 8 of which states:

*"Measures should be taken to ensure that the results of DNA analysis are deleted when it is no longer necessary to keep it for the purposes for which it was used. The results of DNA analysis and the information so derived may, however be retained where the individual concerned has been convicted of serious offences against the life, integrity or security of the persons."*

<sup>6</sup> S and Marper v United Kingdom [2008] ECHR 1581 See para 99

25. The proposal that the DNA profiles of all persons convicted of a recordable offence appears to run contrary to this Recommendation, given that this would mean that those convicted of minor offences would also have their DNA retained. This could potentially result in a challenge to the amended framework on the grounds that it indiscriminately retains the DNA profiles of all adults who have been convicted of a recordable offence. In considering this issue the Court would consider the established practices throughout the members of the Council of Europe. The Committee may wish to consider the Court's ruling in *W v Netherlands*.<sup>7</sup> In this case the Court found that the arrangements for the retention of convicted persons DNA records by the Dutch authorities were proportionate due to a number of factors, the Court noted that:

*“DNA material can only be taken from persons convicted of an offence of a certain gravity, and that the DNA records can only be retained for a prescribed period of time that is dependent on the length of the statutory maximum sentence that can be imposed for the offence that has been committed”*

26. The Commission therefore advises that the Committee investigate whether the Department considers that the current proposals comply with Recommendation No. R(87) 15 and if the Department are confident that a prospective challenge, on the grounds that the amended framework fails to distinguish between persons convicted of a recordable offence, would be unsuccessful. The Committee may wish to consider whether recordable offences should be further classified in light of their gravity. The proposed reforms to the fingerprint and DNA retention framework do not envisage individuals having a right to apply for the destruction of their fingerprints and DNA. In light of the procedure introduced allowing sex offenders to seek a discharge of their notification requirements the Commission considers that it would be good practice to provide for a similar provision in respect of the fingerprints and DNA framework.

**A person arrested for or charged with a recordable offence**

27. The Commission broadly welcomes the provisions of the Bill relating to the retention of DNA profiles of individuals who have been charged or arrested but not convicted of an offence. However advises that the Committee consider the circumstances in which a person who has been arrested but not charged may have their DNA retained.
28. Under the proposed new Article 63D(5) of the Police and Criminal Evidence (NI) Order 1989 the DNA profile of a person arrested for a qualifying offence may be retained for 3 years where prescribed circumstances apply and the consent of the Northern Ireland Commissioner for the Retention of Biometric Materials (NICRBM) has been given. The Commission notes that the ‘circumstances’ required to be present before the NICRBM may grant his/her consent are not defined in the Bill and will instead be defined by way of an Order of the Department. It is important that the arrangements in place to provide for the retention of an arrested person's DNA profile safeguard the presumption of innocence. The Joint Committee on Human Rights when considering the Protection of Freedoms Bill noted that:

*“to continue the retention of biometric material on arrest in some cases may create a significant risk of incompatibility with the right to respect private life”.*

29. The Commission advises that the Committee invite the Department to define the circumstances in which an arrested persons' fingerprints and DNA profile may be retained within the Bill. The Committee may also wish to request details of the evidential basis informing this approach.
30. The Chief Constable may apply to a District Judge for an order extending the retention period by 2 years. The person to whom the retained fingerprints and DNA profile belongs may appeal against such an order. The Bill and accompanying explanatory notes do not identify

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7 Application no. 20689/08, 20 January 2009



the grounds upon which an order may be sought or on which an appeal may be brought. The Commission advise that the Committee seek information in respect of this matter.

### **The Position of under 18s**

31. The retention of biometric material taken from children raises particular human rights issues. These were considered by the Court in the S and Marper case, which was concerned at the stigmatising effects which retention of a child's DNA may have upon them. In its judgement the Court referred to the UNCRC, which was ratified by the UK in 1991. The UNCRC sets out the international standards for the protection of children's human rights, which are specific to children by virtue of their age and vulnerability.

32. The UNCRC states that the best interests of the child shall be a primary consideration in all decisions which affect the child. The UNCRC places specific obligations on states with respect to children involved in the criminal justice system:

*"1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."*<sup>8</sup>

33. The Commission advises that the Committee considers both obligations placed on the state by virtue of the ECHR and the UNCRC in considering the aspects of this Bill relating to children.

34. The Bill distinguishes between children and adults in one respect, where a child is convicted of a first minor offence and is sentenced to less than 5 years in custody he/she will have his/her fingerprint and DNA profiles retained for 5 years plus the length of any custodial sentence imposed rather than indefinitely (see proposed Article 63B). On conviction of a further minor offence within the retention period a child will have their fingerprint and DNA profiles retained indefinitely. The provisions relating to retention on conviction, charge and arrest for a qualifying offence will apply to children as they do to adults.

35. In light of the emphasis placed on the stigmatising effect of DNA retention by the Court and the importance which the UNCRC places on promoting a child's sense of dignity and worth, the Commission considers that a strong evidence case demonstrating that this arrangement assists in the prevention of crime must exist. The Committee may wish to seek information from the Department on this matter.

### **Conclusion**

36. This Bill contains a number of provisions which have the potential to promote and enhance human rights protections throughout the jurisdiction. The Commission welcomes the willingness of the Committee to consider and deal with complex human rights issues.

37. Reforms to both the sex offender register and the fingerprints and DNA retention framework are intended to ensure that both measures are proportionate. An assessment of proportionality is a complicated exercise. In this paper we have set out for the Committee a number of key issues to be conscious of in assessing the proportionality of this measure. We suggest a number of matters regarding the proposed reform of the fingerprint and DNA retention framework that require further consideration and would be pleased to provide the Committee with further information on any specific matter.

38. The provisions relating to human trafficking are welcome. The Commission wishes to see conclusive provisions for dealing with those engaged in human trafficking. To this end we

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8 Article 40

seek clarification on the application of the proposed section 58A of the Sexual Offences Act 2003 to a non-UK national who is present in Northern Ireland but not habitually resident here who arranges or facilitates trafficking outside of the UK.

## Northern Ireland Human Rights Commission Annex A

### Number of People Imprisoned for Non-payment of Fines<sup>9</sup>

Year	Number Imprisoned
2009	1,247
2010	1,891
2011	2,179

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9

Figures than from CJINI follow up review on 'The enforcement of fines' 31st July 2012

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## Northern Ireland Human Rights Commission Appendix B

<b>Application: 30562/04</b> <b>Judgment final on:</b> <b>04/12/2008</b>	<b>S. AND MARPER v. the</b> <b>United Kingdom</b>	<b>Enhanced procedure: Complex</b> <b>problem</b>
<b>Reference texts:</b> Action plan (05/05/2011) DH-DD(2011)333E Information document CM/Inf/DH(2011)22rev Communication from the United Kingdom: DH-DD(2010)327E Communication from the United Kingdom DH-DD(2012)728E Communication from a National Human Rights Institution (NHRI) and reply of the government DH-DD(2011)437E Decision adopted at the 1115th meeting		

**Case description:** This case concerns an unjustified interference with the applicants' right to respect for their private life due to the retention for an indefinite period of cellular samples, fingerprints and DNA profiles taken from them in 2001, in connection with their arrest for offences for which they were ultimately not convicted (S., an 11-year-old, was acquitted of attempted robbery and Marper saw charges dropped as the complaint against him for harassment was withdrawn) (violation of Art. 8)

**Status of execution:** *Individual measures:* The applicants' fingerprints, DNA samples and profiles have been destroyed. The retention of biometric data taken from one applicant on suspicion of having committed a subsequent criminal offence is linked to the general measures.

*General measures:* After the judgment became final in December 2008, the United Kingdom authorities put forward initial legislative proposals. At the Committee's request, bilateral consultations were entered into by the United Kingdom authorities and the Secretariat. Following these consultations and a change of government in the United Kingdom in July 2010, the authorities submitted an action plan on 7 March 2011 which detailed legislative proposals to execute the judgment in England and Wales. An analysis of the proposals is presented in Memorandum CM/Inf/DH(2011)22rev. These legislative proposals were adopted in the Protection of Freedoms Act 2012 on 1 May 2012, but have not yet been brought into force.

In its last decision in this case (1115th Meeting (DH) 7-9 June 2011) the Committee of Ministers welcomed the proposals set out in the action Plan in particular that a time limit of three years for the retention of fingerprints and DNA profiles would be introduced for individuals arrested but not convicted for a serious offence, with a possible, single extension of two years upon application of the police to the national courts. In that decision, the Committee of Ministers also invited the UK authorities:

- to provide evidence on how the time-limit of three years was selected;
- to provide information on consideration of the special treatment of minors in this context;
- to provide information on the measures to implement the judgment in Northern Ireland;

In response, the United Kingdom authorities submitted information on 14th and 17th October 2011 (see DD-DH(2012)728).

### Evidence on how the time-limit of three years was selected

The information submitted sets out the statistical evidence for the time-limit selected. It indicates that the risk of re-offending for adults charged but not convicted of a serious offence falls to the same level as that of the general population around three years after the arrest. It concludes that this statistical evidence supports a three year time limit for the retention of DNA and fingerprints taken from those arrested but not convicted of serious offences.

## Consideration of the special treatment of minors in this context

The information submitted also summarises how the retention period for minors was selected. According to this information, the risk of minors reoffending after arrest is higher than that for adults. However, a range of other factors should be taken into account, including the particular position of children in society highlighted in the European Court's judgment, and this justifies the selection of a 3 year retention period for fingerprints and DNA profiles taken from minors arrested for serious offences.

## Measures to implement the judgment in Northern Ireland

The United Kingdom authorities indicated that a Public consultation on legislative proposals for the retention and destruction of DNA and fingerprints in Northern Ireland ended on 7 June 2011. In the main, the proposals replicate those currently contained within the Protection of Freedoms Act 2012 and are included in the Criminal Justice Bill (Northern Ireland), which was introduced into the Northern Ireland Assembly on 25 June 2012. It is envisaged that the Bill will complete its passage by February/March 2013.

In addition to the three issues identified by the Committee in their last decision, the Memorandum also addressed the question of interim measures, and the authorities confirmed that now the Protection of Freedoms Act had received Royal Assent, the police in England and Wales would begin removing the profiles of unconvicted people from the National DNA Database. In their response to a Rule 9 submission from the Northern Ireland Human Rights Commission (DD-DH(2010)437), the authorities indicated that the same approach would apply for Northern Ireland in due course. On 30 July 2012, the authorities indicated that the deletion of material would begin in England and Wales within the next two to three weeks.

Application	Case	Judgment of	Final on
30562/04+	S. AND MARPER	04/12/2008	Grand Chamber

### Decisions

#### The Deputies

1. recalled that in its last decision concerning this case the Committee of Ministers welcomed the authorities' legislative proposals for England and Wales in response to the European Court's judgment, set out in the Action plan (see decision from its 1115th meeting (DH) 7-8 June 2011), and noted with satisfaction that these proposals were adopted in the Protection of Freedoms Act 2012 on 1st May 2012;
2. noted that when selecting a three year retention period for data taken from minors arrested for serious offences the authorities took into account the particular position of children in society as highlighted in the European Court's judgment;
3. noted with interest that legislative proposals which replicate the Protection of Freedoms Act 2012 are under consideration in Northern Ireland and strongly encouraged the authorities to progress those proposals as quickly as possible;
4. invited the authorities to keep the Committee of Ministers updated on the coming into force of the legislation in England, Wales and subsequently Northern Ireland, and on the deletion of DNA profiles and fingerprints not covered by the new legislation;
5. agreed, in light of the above, to transfer this case for supervision under the standard procedure

# Northern Ireland Human Rights Commission Appendix C

## SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRETARIAT DU COMITE DES MINISTRES



Contact: Mireille Paulus  
Tel: 03 88 41 22 55

Date: 10 August/août 2012

**DH-DD(2012)728**

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Meeting: 1150 DH meeting (24-26 September 2012)

Item reference: Communication from the authorities (14/10/11 and 17/10/11)

Communication from the United Kingdom concerning the case of S. and Marper against United Kingdom (Application No. 30562/04)

Information made available under Rule 8.2.a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

\*\*\*\*\*

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Réunion : 1150 réunion DH (24-26 septembre 2012)

Référence du point : Communication des autorités

Communication du Royaume-Uni relative à l'affaire S. et Marper contre Royaume-Uni (requête n° 30562/04) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 8.2.a des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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## **DNA RETENTION POLICY: RESULTS OF ANALYSIS RELATING TO THE PROTECTIONS OF 'THE SCOTTISH MODEL'**

### **Summary**

The Coalition Agreement<sup>1</sup> contains a commitment to introduce a policy framework for managing the DNA database which affords 'the protections of the Scottish model of DNA retention.' The Crime and Policing Analysis Unit (CPA) of the Home Office has undertaken an analysis of the salient aspects of the Scottish retention model. This paper presents the results.

The analysis considered the length of time for which the offending risk of a group of individuals who might be subject to the retention policy is above the level observed in the general population. This was taken to provide an initial indication of the retention period which might be *prima facie* justified on this restricted criterion. Factors such as the costs of retention and the non-quantifiable effects on individual privacy would be expected to point towards a shorter, rather than longer, retention period, especially where statistical error gave a range of possible retention periods to be considered. Due to a lack of suitable information, it was not possible to consider these factors formally as part of the analysis.

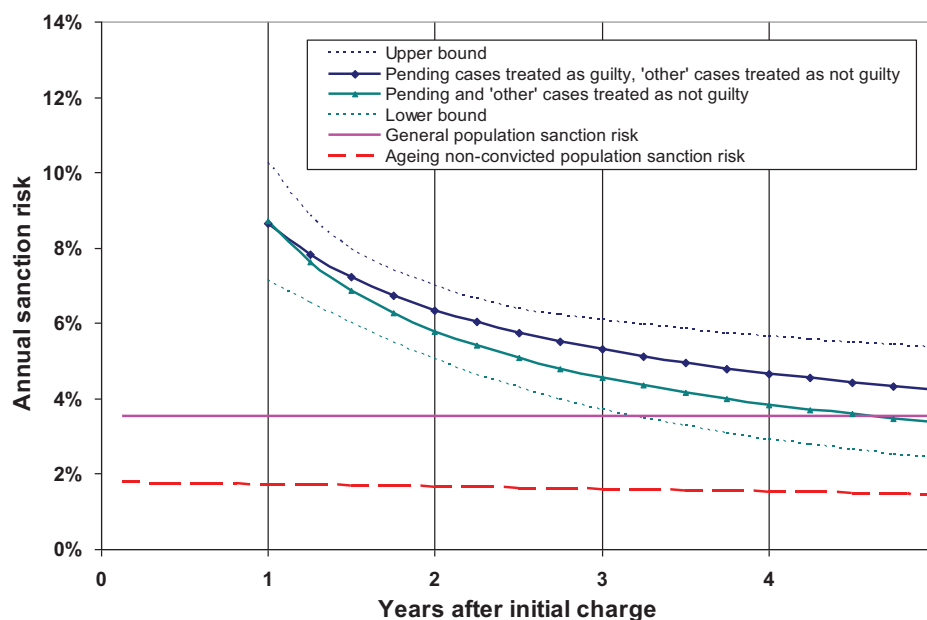
The methodological approach was based on the estimation of 'hazard rate curves', which describe how the risk of different CJS disposals varies over time following some initial CJS event. These hazard curves were estimated on the basis of data obtained from the Police National Computer. The risk estimates described by the hazard curves were then compared with an estimate of the relevant risk in some comparable general population.

Figure S1 presents the results of the analysis undertaken for the scenario where DNA profiles are retained when an individual has been charged with but not found guilty of a qualifying offence. A qualifying offence for this particular scenario is defined as one which appears on the existing Crime and Security Act (2010) offence list, with the addition of robbery. It shows hazard curves describing the risk of receiving a conviction or caution following the initial charge, estimated under differing treatments of pending cases, as well as upper and lower bounds (95 per cent confidence intervals) for those curves. It compares those curves against risks estimated for two possible comparable general population definitions. The results suggest that the earliest that offending risk in the charged group falls to the level present in a comparable general population is just over three years after the initial charge. This is based on a comparison of the lower bound hazard curve for the charge group and the risk estimated for all individuals in the general population (age- and gender-adjusted). The results also suggest that offending risk in the charge group might not fall to the level estimated for a comparable general population over relevant timescales. There is some statistical uncertainty associated with the results, as demonstrated by the distance between the upper and lower bounds, due to the relatively small available data sample.

<sup>1</sup> [http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

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**Figure S1 Charge-to-sanction hazard rates and comparable general population sanction risks for proposed offence list**



Similar analysis was undertaken for the larger group of individuals who were arrested for a qualifying offence but with no further action. The results were similar, with hazard rates estimated to fall to the comparator level at least three years following the initial arrest, and not over relevant timescales for some scenarios. The results of the arrest-based analysis were subject to less statistical uncertainty due to much higher available sample sizes.

Comparative analysis was also undertaken to explore the implications of different factors on relative policy treatments. The results suggested that, if temporary retention was assumed to occur on charge with no conviction, relative sanction risks were higher, four years after the initial arrest, in the group charged with serious offences than in the group charged with other offences. If temporary retention was assumed to occur on arrest with no further action, there was no clear difference in relative sanction risk four years after the initial arrest between those arrested for serious offences and those arrested for other offences. The analysis found that sanction risk following a fixed penalty notice appeared more similar to that following arrest or charge with no conviction (and relatively lower) than to that following a proven offence. Sanction risks following a first caution or non-custodial conviction were relatively similar four years after the initial offence; sanction risks following a second caution or non-custodial sentence (or combination of the two) were relatively higher. Finally, in all cases where a comparison could be made, relative risks in the juvenile sample were higher than in the adult sample.

It should be noted that the results are sensitive to the choice of general population comparator group.

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## Introduction

The Coalition Agreement<sup>2</sup> contains a commitment to introduce a policy framework for managing the DNA database which affords 'the protections of the Scottish model of DNA retention'. This paper presents the results of analyses undertaken by the Home Office Crime and Policing Analysis Unit (CPA) on the salient aspects of the Scottish retention model. These analyses are based on data on arrests and convictions obtained from the Police National Computer (PNC). They consider the offending behaviour of individuals in the time period following different types of criminal justice system (CJS) event (e.g. arrest with no further action, caution or conviction) and for different types of individual and offence.

### 1. Conceptual approach adopted in the CPA analysis

The broad conceptual approach to examining the issues relevant to DNA retention policy was to consider how the offending-related behaviour of individuals who might be subject to a particular policy compares with individuals who would not be subject to the policy but who are otherwise similar. For instance, the behaviour of individuals with no previous convictions, who are arrested and charged with an offence but not convicted, might be compared with that of other individuals who have not previously been charged or received a conviction.

A significant difference in behaviour between groups of individuals could be said to provide a *prima facie* case for having differential policy treatment of them. Where behaviour is different but changes over time, differential treatment could be said to be *prima facie* justified for as long as behaviour is significantly different. This might be specifically relevant to the question of whether DNA retention should be temporary, and if so, for how long. However, this approach would be considering only offending risk as a possible basis for the case for differential treatment. There might be other justifications for differential (or, indeed, similar) treatment.

Individuals' behaviour can be measured in terms of the risk of subsequent contact with the CJS – whether in terms of arrest, caution, conviction or some other outcome. Measuring behaviour in terms of the risk of future CJS disposal<sup>3</sup> specifically has the advantage of a direct link with the harm associated with offending, and hence supports the assessment of policies with public protection objectives. That link is closer for some disposals than others. For example, convictions have a proven link with an offence, and hence harm, whereas a Fixed Penalty Notice (FPN) requires no proof or acceptance of guilt. An arrest (which is not a disposal) need not necessarily imply any actual offending has taken place. No disposal measures the full extent of an individual's offending, however, since not all offences he might commit are likely to be reported to the police or brought to justice.

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<sup>2</sup> [http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

<sup>3</sup> 'Disposal' is a general term to refer to proven convictions for an offence, cautions, warnings, fixed penalty notices and other outcomes imposed on an offender following an offence.



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Evidence that offending risk is significantly higher in one group than in another is insufficient on its own to justify a differential DNA retention policy. The costs and benefits of retention should be taken into account, and some of these are not easily quantified. If such a policy is to be justified on cost-benefit grounds, three conditions (at least) would need to hold:

1. There are benefits to be gained from retaining DNA profiles, in terms of the likely impact on detection rates, crime and, ultimately, harm, or some other form of social value (e.g. justice) – otherwise, no retention is justified in the first place;
2. The benefits of retaining the profiles of one group of individuals are higher than those of retaining the profiles of the general population (however defined) – otherwise, there is no case for singling out any particular group, just because they come into contact with the CJS. This is the relative risk issue already mentioned;
3. The benefits of retaining DNA profiles outweigh the costs, in terms of, for example, database maintenance but also factors such as individual privacy.

Assuming condition 1 holds, if offending risks in one group of individuals and the general population are equal, the incremental benefits of DNA retention for that group are zero. If retention costs are positive, then a cost-benefit approach will tend to set a retention period at a point where there is a positive increment in offending risk between the retained group and the general population. That is, these other factors will tend to point towards a shorter retention period, rather than a longer one. The length of time for which the offending risk of one group of individuals is above the level observed in the general population only gives an indication of the retention period which might be justified if retention costs are zero.

An 'optimal' retention period would be based on the full costs and benefits of DNA retention. However, the evidence currently does not exist in a form which would permit the estimation of the marginal value of retaining the DNA profiles of different individuals, in terms of the impact on crime or (e.g.) justice.<sup>4</sup> There is also no available evidence of the cost of retention in terms of its impact on individual privacy. Therefore, this analysis was not able to estimate optimal retention periods for DNA retention.

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<sup>4</sup> The ACPO Criminal Records Office (ACRO) has undertaken research which demonstrates that retained DNA profiles can contribute to the resolution of criminal cases (ACRO, 2009). However, it was not able to quantify the additional contribution that profiles can make, or to say for how long retention is justified. Further, strong evidence is currently lacking of the impact case resolution has on crime, or of the benefit case-resolution has in terms of justice or other social values.

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## 2. Aspects of DNA retention policy considered in the CPA analysis

For the purposes of this analysis, the Scottish model of DNA retention<sup>5</sup> can be characterised as follows:

- Indefinite retention of DNA profiles of adults and juveniles on conviction for any offence;
- Temporary retention of DNA profiles of adults and juveniles on charge (but not conviction) for qualifying violent and sexual offences for three years (extendable by two years on application).

This compares with the legislative regime introduced with the Crime and Security Act 2010, whereby temporary retention was permitted on arrest (with no further action) for any offence for six years.

In addition, the European Court of Human Rights, in its *S and Marper* judgement<sup>6</sup>, found a case in favour of treating juveniles more leniently than adults in terms of their contact with the CJS and any subsequent retention of their DNA.

This suggested that issues that might usefully be considered in the current analysis were as follows:

- Retention periods for those arrested for or charged with an offence, but not sanctioned;<sup>7</sup>
- Retention periods for those receiving different CJS disposals, for instance, cautions;
- Comparison of behaviour of juveniles and adults;
- The definition of qualifying offences.

Further details of the methodologies to explore these issues are given below.

## 3. Methodological approach

### *Hazard rates*

The basic approach adopted in this work was to describe the behaviour over time of a given sub-population of interest in terms of a 'hazard rate'. This approach has been used previously in the academic literature concerning offending behaviour over time (e.g. Kurlycheck *et al*, 2006; Blumstein and Nakamura, 2009; Soothill and Francis, 2009). The hazard rate for conviction can be estimated as follows:

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<sup>5</sup> Police, Public Order and Criminal Justice (Scotland) Act 2006. Details of the Scottish framework were provided as part of the 2008 consultation on DNA and fingerprint evidence (<http://www.scotland.gov.uk/Publications/2008/09/22154244/15>).

<sup>6</sup> *S and Marper v United Kingdom* 30562/04 [2008] ECHR 1581 (4 December 2008)

<sup>7</sup> The more general term 'sanction' is used rather than 'conviction' to reflect the fact that some CJS disposals do not require proof of guilt (e.g. cautions) or acceptance of guilt (e.g. FPNs).

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$$h(t|G) = \frac{\text{Number of individuals in group } G \text{ convicted at time } t}{\text{Number of individuals in group } G \text{ not convicted up to time } t} \quad (1)$$

where  $h(t|G)$  is the hazard rate for any given group,  $G$ , at any time,  $t$ . The hazard rate is therefore the probability that an event (in this case, conviction) occurs in the proportion of the group for whom the event has not occurred up to that point. As the event occurs to more and more individuals over time, those individuals are no longer relevant to the calculation of future risk and they are removed from the denominator in (1). This measure is therefore particularly suited to the analysis of policies which are designed to manage risks over time.

A policy of temporary DNA retention on (e.g.) arrest or charge might be applied to the first such event with no sanction or to any such event with no sanction. The former would imply that DNA would be retained on arrest or charge for a maximum length of time equal to the retention period, unless there was an intervening conviction which precipitated indefinite retention. The latter would mean that the retention 'clock' would be 'reset' on subsequent arrests or charges. 'Clock-resetting' is a possible policy option and hence is relevant to the assessment of the appropriate retention period for any particular policy scenario. Therefore, hazard rates are correctly estimated taking account of the effects of resetting. In practice this means removing individuals from the denominator in (1) after a 'reset' as well as after a subsequent sanction.

Resetting has effects on the estimates of hazard rates obtained, and these effects depend on factors which might be the subject of policy scenarios. An example would be the definition of a qualifying offence, which affects how frequently an individual might experience the event in question, and hence how often a reset might occur. Resetting could therefore make it more difficult to isolate the impacts on the analysis of specific variations in the details of the retention policy. For this reason, hazard rates were calculated with and without the effects of clock-resetting, depending on the question being considered (see below).

In some cases, individuals in the initial arrest cohort considered in this analysis had been re-arrested subsequently, but the outcome of that re-arrest was still pending. Therefore, different hazard rates were also calculated assuming the outcomes of these cases were either sanctions ('guilty') or no sanction ('not guilty').

#### *Comparative measures of general population risk*

To provide an indication of the period of time that estimated hazard rates in group  $G$  might diverge, implying a possible (*prima facie*) argument for differential retention of DNA profiles, the annual probability that the same event occurs in a comparable, general population was calculated. A comparable population was defined primarily in terms of the age and gender composition of the cohort under consideration. Because the evidence suggests that age is a key driver of offending risk (and, in particular, that offending risk rises steeply to a peak at around 18 years of age before then

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declining (Soothill *et al*, 2002)), the hazard rate for the comparable population is also likely to change over time.

It is to be expected that conviction rates for individuals with no prior convictions will be lower than for individuals who are proven offenders, at least on average.<sup>8</sup> It might be argued that the comparative general population group should have the same convictions profile as the group of individuals who are the subject of the specific policy scenario in question. For instance, the behaviour of individuals with no prior convictions who are arrested and charged with a qualifying offence should arguably be compared only with the behaviour of individuals in the general population who also have not been convicted previously, or even charged. If this is the case,<sup>9</sup> a comparative risk estimate which does not exclude individuals with prior convictions is likely to be too high, because it will be inflated by the effects of the previously-convicted group, and the relative seriousness of the behaviour of the policy scenario group will be under-estimated. Due to data limitations, however, the proportion of the general population with prior convictions can only be estimated with some difficulty, and it is generally not currently possible to identify individuals with no prior arrests. The implications of this are considered below.

#### *Power curves*

The data available for the current analysis to estimate hazard curves were limited in terms of the period of time they covered (see below). In particular, suitable data on arrests and charge were only available for a period of approximately four years (see Section 6). Hazard rates beyond four years were therefore estimated by fitting a power curve to the observed data and extending the curve to later years. This extrapolation can only be done with error and hence introduces some uncertainty into results outside of the four-year data period. Analysis of reconviction rates, for which more data are available, suggests the power curve is likely to remain a reasonable approximation for at least seven years. Extrapolating beyond seven years introduces increasing amounts of uncertainty, since the point at which the power and hazard curves diverge is not known.

Results reported below relating to a time within the four-year data period are also those obtained from the fitted power curves. Using calculated hazard

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<sup>8</sup>This might be expected, but it does not have to be the case: for instance, if a subset of proven offenders who had already permanently 'desisted' was compared with a subset of individuals with no previous convictions who were 'late onset' offenders, then the future conviction risk of the former might be lower than that of the latter.

<sup>9</sup> There is no single 'correct' definition of the population against which the behaviour of any particular sub-group should be compared for this analysis. It would seem appropriate that a policy of DNA profile retention should target those people who represent a higher risk of future offending. Elevated risk is by implication taken to be indicated by a CJS event such as arrest or charge, since it is at this point that DNA retention is proposed. However, future offending risks vary across the population in relation to factors other than prior CJS contact (e.g. age). A retention policy for individuals who come into contact with the CJS which is based only on comparing their offending risks with those of others in the same cohort could therefore result in a policy which selects a group of individuals with different levels of risk. Some of these individuals could then have lower risks than other individuals from different cohorts who are not selected simply because they have not had contact with the CJS.

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rates rather than observed hazard rates in this way has the advantage of increasing the accuracy of results within the four-year period by reducing the impacts of both random noise and distortions caused by seasonal or one-off events. The residual impact of these factors was estimated using a statistical technique called boot-strapping. This involved generating 1,000 alternative data sets from the observed data<sup>10</sup>, fitting a power curve to each data set and calculating the 95 per cent confidence interval of these power curves. This approach avoids many of the assumptions of simpler techniques and enables the impact of sampling error on the extrapolated results to be estimated.

#### *Real relative risks*

A second approach to dealing with the potential uncertainty introduced by the limited availability of data was to evaluate proposals by comparing risks, for the policy group and the general population, estimated at a point four years after the initial event relevant to each scenario.

If the ratio between the two risks is 1:1, then this indicates that they are (or are close to) equal. The extent to which the ratio is higher than this gives a measure of the divergence between the two risks (and hence, on the basis of the argument presented in Section 1, a continuing *prima facie* case for differential treatment).

This approach was adopted because it ensured that all results were being compared on the basis of real, rather than forecast or extrapolated, data, since four years was the minimum amount of real data available for any policy scenario under consideration. The disadvantage was that it did not take account of the trajectory of offending risk, and whether or not risks were likely to approach equalisation near to the four-year point.

However, two points can be made in relation to this weakness. First, the uncertainties in estimating the hazard curves and comparator population risks were such that the time period taken for risks to be equalised was not likely to be estimated robustly enough, at least in some cases, for it to be regarded as a reliable *point estimate*. Second, even if it were, this would only be an estimate of a retention period based only on conviction risk, and as suggested above, the information does not currently exist to estimate optimal retention periods on the basis of a comparison of costs and benefits. In that respect, therefore, risk ratios could be seen as an indicator of what differential treatments (in terms of relative retention periods) might be appropriate based on this evidence. However, the exact relativities adopted in practice would need to be a matter of judgement.

#### **4. Data**

The previous discussion indicates that data requirements for the current analysis included data relating to the offending behaviour of individuals following arrest, charge and sanction. Data were also needed for the

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<sup>10</sup> Each alternative data set is the same size as the original but the random selection is done with replacement, so some individuals might appear multiple times whilst others might not appear at all.

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estimation of conviction risks in the general population. Data on offending behaviour following arrest, charge and sanction were obtained from the PNC. Two versions of the PNC database were accessed.

#### *Arrest-to-sanction data*

The operational version of the PNC is a hierarchical database, maintained by the National Policing Improvement Agency, and used by the police to share information on people, vehicles, crime and property. This version was used to identify all individuals arrested between April and July 2006. Before April 2006, PNC arrest data were heavily weeded, which made the remaining arrest data incomplete in ways it was not possible to specify. April 2006 is therefore the earliest date available for consistent PNC information on arrest and charge. July 2006 was set as the end of the sample selection period to account for the time taken for arrests to be resolved in a definite outcome (i.e. as no further action, charged but not guilty, caution or conviction). Statistics on the time from 'offence to completion' for cases passing only through magistrates' courts suggest a mean duration of over three months, with a significant 'tail' extending beyond 12 months (Ministry of Justice, 2009). Time taken in crown courts, where more serious offences are tried, is likely to be even longer. An end date of July 2006 would allow a follow up period of at least four years, which was considered sufficient to limit the impact that pending cases might have on the analysis. As described above, pending cases were dealt with by constructing different hazard curves on the assumption that they were resolved either as no further action or disposal.

Table 1 Characteristics of the arrest-to-sanction data

<i>Arrests</i>						
People	Mean age	Males (%)	Arrest dates/ person	Offence codes/ event date	Total arrests	Total cases
84,256	29	73	2.0	1.3	167,833	222,118
<i>Outcomes (n=222,118)</i>						
No further action	Fixed penalty notice	Caution/ warning	Charged – guilty	Charged – not guilty	Charged – pending	Other
97,165	484	17,228	41,231	24,695	10,300	31,015

Table 1 provides information on the characteristics of the arrest-to-sanction data. The arrest data obtained covered all 84,256 people with no previous sanctions who were arrested during the period April to July 2006. Variables in the dataset were age, gender, the date of each arrest from April 2006 to June 2010, the associated offence codes and any CJS outcomes.<sup>11</sup> There was a

<sup>11</sup> It is important to recognise the restricted scope of the variables recorded in the PNC research database relating to individuals. These are limited to age, gender, perceived ethnicity, CJS contact type, offence type and sentence type. No other information is provided which might potentially be useful in explaining variations in offending behaviour, such as educational attainment, psychological profile, parental background and so on. This significantly limits the type of analysis that can be done, and explains why it was not considered appropriate to adopt (for instance) multivariate and similar analytical approaches for either the arrest- or sanction-based work.

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total sample of almost 170,000 arrest events and over 220,000 individual 'cases' (arrest-offence combinations). 75,000 resulted in a charge, of which just 10,000 were pending at the end of the sampling period.

Effective sample sizes varied according to the scenario under consideration; for instance, a restricted list of qualifying offences limited the relevance of some arrest and charge events. This produced a maximum sample size of just fewer than 65,000 arrest events for the scenario which considered the sanction behaviour of individuals arrested for offences which were not on the 'CSA+'<sup>12</sup> list, with some individuals appearing more than once because they had multiple eligible arrests within the selection period. The scenario which considered individuals who were arrested for offences on the 'CSA+' produced a sample of size of just over 23,000, with the 'Scottish list at arrest' scenario generating just over 26,000. The smallest arrest sample was obtained for the scenario considering behaviour following retention on charge, with 7,794 eligible adult arrests. A sample of 1,323 juveniles for the same scenario was considered too small to permit reliable comparisons. The smallest charge sample was 2,229 for the 'CSA+' scenario.

#### *Sanction-to-sanction data*

The research version of the PNC is an anonymous relational database, maintained by the Ministry of Justice, and used to support research across the CJS into offending behaviour. This version was used to identify 346,620 individuals (71 per cent male, mean age 26) who received their first conviction, caution or equivalent during 2005, and 136,914 (80 per cent male, mean age 24) who received their second.<sup>13</sup> Each individual in the first group averaged 1.9 dates on which they received a conviction or caution (or equivalent) dates up to the end of 2009, and each date was associated with an average 1.3 offence codes. Each individual in the second group averaged 3.0 dates and 1.4 offence codes per date during the same period. As was the case for arrests, effective sample sizes varied according to the scenario under consideration. A maximum sample size of 191,248 was obtained for the sanction-to-sanction analysis of adult behaviour following a proven offence; the smallest sample size was 3,816 for the analysis of the behaviour of juveniles following their second conviction.

#### *General population comparator data*

General population comparator hazard rates were based on a combination of data from the PNC research database and population statistics from the Office for National Statistics (ONS). Dividing the number of people in each age-gender group who received a caution, conviction or equivalent in 2008 (PNC) by the mid-year population estimate for the same group (ONS) produced annual sanction likelihoods. These were then weighted according to the gender and age profile of the portion of the sample who did not receive a proven offence during the follow-up period. The age profile used was that pertaining either at initial arrest (charge) or at a point four years later – the limit of the data used in the analysis – depending on the scenario. Using the

<sup>12</sup> This and other scenarios discussed here are described in more detail in Section 6 and footnote 18.

<sup>13</sup> The research PNC does not currently include data on arrests or charges.

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four-year profile was particularly relevant to cases relating to juvenile samples whose rates of offending change much more significantly with age than adults'. 2008 was chosen as the reference year because it was the mid-point of the four-year data period.

The approach described above was based on statistics including individuals with previous convictions, who, as argued above, are likely to have conviction rates which are higher than individuals with no previous convictions. Therefore, comparator rates were also generated for the subset of the population with no prior cautions or convictions. Historical information on this issue is not readily available, so figures were estimated as follows. First, the research version of the PNC database stretches back far enough that it could be used to calculate the number of individuals under the age of 19 who had committed a prior proven offence by the end of 2008. This, combined with ONS population statistics, permitted the calculation of the size of the 'innocent' population of each age to 18. The size of the population with no convictions in each age older than 18 was then assumed to be equal to the estimate of the not-guilty population of the previous age, less the number of first-time proven offenders for that age group in 2008 (from the research PNC), and adjusted by the relative total population sizes of the two age groups, as follows:

$$N_a^I = (N_{a-1}^I - FTE_{a-1}) \times (N_a^T / N_{a-1}^T) \quad (2)$$

where, for ages greater than 18, and at the start of any given year,  $N_a^{I,T}$  is the size of the total ( $T$ ) and innocent ( $I$ ) populations of age  $a$ , and  $FTE_a$  is the number of 'first-time entrants to the CJS' (individuals receiving their first conviction or caution) of age  $a$  in that year.

The approach therefore assumed that rates of first-time offending in the 19-plus age groups were similar, historically, to first-time offending rates in the same age groups in 2008. Clearly, to the extent that offending rates have changed over time, this would be expected to generate some error in the resulting estimates. This error might not be significant for younger age groups, whose estimates were based on years relatively recent to 2008, giving little scope for changes to have occurred. The error might be more significant for older age groups whose peak age of offending was some time in the past. However, the overall effect on the general population comparator is likely to be minor, given the relatively small proportion of first-time entrants from older age groups.<sup>14</sup> If the current estimates of first-time offending rates for the 35 to 60 age groups were to be doubled, the overall, general population first-time offending rate estimate would rise from an initial 1.75 per cent per annum (see Figure 2) to an initial 1.9 per cent per annum, or by less than nine per cent, suggesting this estimate is not very sensitive to possible errors generated by this aspect of the methodology.

<sup>14</sup> For instance, in 2008, there were nearly four-times as many first-time entrants to the CJS aged between seven and 25 as aged between 35 and 60.



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## 5. Results

*How does the risk of sanction following arrest and charge compare with sanction risk in the general population?*

The first piece of analysis considered individuals with no prior sanctions who were arrested for a qualifying offence, between April and July 2006, but not sanctioned for it.<sup>15</sup> The initial focus is on individuals who were then charged but not found guilty, as this is the CJS event which can precipitate temporary retention under the Scottish model. A qualifying offence was defined as the existing Crime and Security Act (2009) (CSA) list with the addition of robbery.<sup>16</sup> Hazard curves were constructed assuming that pending cases were either guilty or not guilty. Cases classed as 'other' in the dataset were treated as not guilty. The resulting hazard rate estimates, including the effects of 'clock-resetting', were compared against the estimate of the annual risk of sanction for the general population, adjusted to have the same age and gender profile as the arrestee cohort.

These results are presented in Figure 1, which presents two hazard curves. The first (with diamond markers) is estimated assuming that pending cases are guilty. The other (with triangular markers) is estimated assuming that pending cases are treated as not guilty. Hazard rates are not presented for the period up to one year following initial charge due to variability in the estimates caused by small sample sizes. The dotted lines marked 'Upper bound' and 'Lower bound' are the 95 per cent confidence limits of the power curves obtained from the bootstrapping exercise described above (the confidence intervals for the two curves overlap, so only the extremes are shown). The curves are estimated assuming a policy of 'clock-resetting', so describe how sanction risk changes over the five years following the initial or latest charge (not guilty). The hazard rates at particular time points can then be compared against the estimate of sanction risk in the equivalent general population, which in this case is assumed not to vary over time.

The main hazard curves in Figure 1 show that the central estimate of the point at which the rate of sanction (i.e. convictions and cautions) reaches the national average for the same age and gender profile occurs at least 4½ years after the initial charge (pending cases not guilty) and possibly over five years after (pending cases guilty). The lower bound curve shows that the actual intersection point might occur as early as three years following the

<sup>15</sup> The definition of a sanction here, and in the estimation of hazard rates, includes a conviction, a caution, and a reprimand or warning (for juveniles), which involve proof or acceptance of guilt, but excludes FPNs, which do not.

<sup>16</sup> The list of qualifying offences in the CSA was in turn based on the qualifying offence list in the Criminal Evidence (Amendment) Act (1997). This did not include robbery. However, robbery is an offence which is likely to involve significant levels of violence and attracts a maximum penalty of life imprisonment. Both of these factors (as well as evidence presented by Dubourg *et al.* (2005) on social costs) suggest it is at least as serious as burglary and actual bodily harm, both of which do appear on the 1997 and 2009 lists. Robbery was therefore included in the list of qualifying offences as a likely candidate for inclusion following the Coalition's current review of the DNA retention provisions. This scenario is termed 'CSA+' at various points in this paper.

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initial charge. The upper bound and general population curves at the five year point appear close to parallel, suggesting that, in the limit, any convergence might only occur after a significant period of time.

**Figure 1 Charge-to-sanction hazard rates and general population sanction risk for 'CSA+' offence list**

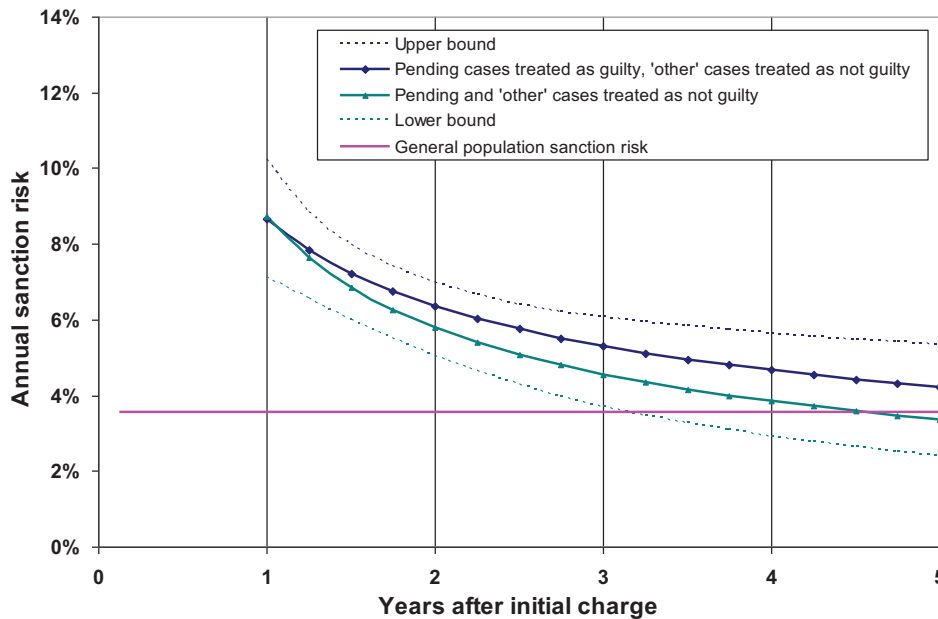
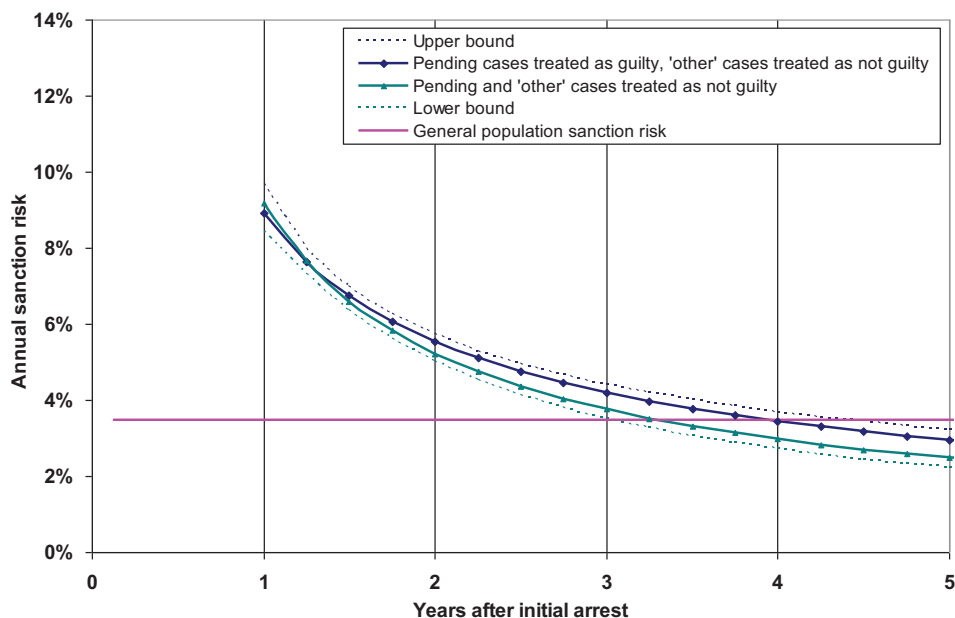


Figure 2 presents similar analysis but for the broader cohort of arrestees which includes those arrested but not charged with an offence. This is the group subject to the DNA retention regime in operation at the time of the S and Marper judgement. The results suggest that the central estimate of the point at which sanction risk for this group reaches the national average occurs between three and four years after the initial arrest. The upper and lower bounds show that the actual intersection point may be as late as 4¾ years or as early as three years after the initial arrest. (The narrower confidence interval compared with Figure 1 reflects the larger sample size for the arrest with no further action analysis.) Further, the average risk over the fourth year is not significantly different from the average annual risk in the general population. The earlier intersection periods for the larger 'arrestee' group compared with the 'charge' group suggest that those who are charged but not convicted present an elevated risk of sanction for a longer period than those who are arrested but not charged. This issue is considered further in Table 2 below.

The analysis presented in Figures 1 and 2 compares arrestees' sanction risks against a risk which would be expected in the general population, after adjustment to make the gender and initial age profile of the two groups similar. This means that the risk measure has two important features:

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**Figure 2 Arrest-to-sanction hazard rates and general population sanction risk for 'CSA+' offence list**



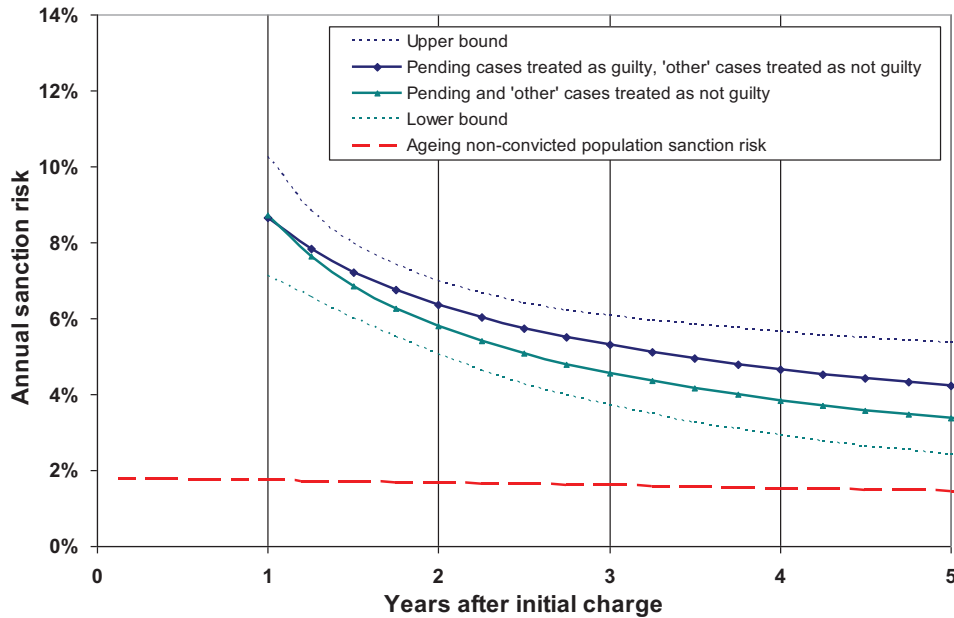
- It is based on a population measure which includes individuals who have been previously sanctioned for an offence. As previously discussed, these individuals are likely to have a higher risk of sanction than individuals who have never been sanctioned previously, meaning that the population average measure will also be higher than for the group limited to individuals with no previous convictions;
- It is constant, and does not reflect the fact that sanction risks change over time. As mentioned above, evidence indicates that risks tend to rise at early ages and reach a peak at around 18, before falling again in later life.

Figure 3 presents the same charge-to-sanction hazard curves as in Figure 1 but with a comparator line which attempts to remove individuals with prior sanctions and to incorporate the effects of ageing. Due to the difficulties in estimating the total number of individuals in the population who have prior sanctions, the comparator line can only be estimated with some uncertainty, and is provided here for illustrative purposes. However, for the purposes of discussion, two remarks can be made about this comparator line:

- The estimated general population risk is lower, at around two per cent per year, compared with almost four per cent per year in Figures 1 and 2, supporting the proposition that individuals with prior sanctions are likely to have a higher risk of future sanction than those without;
- The line slopes very slightly downwards, reflecting the downward effect of ageing on sanction risk. (The effect of ageing on the general population comparator risk estimate can be seen more clearly in Figure 5.)

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**Figure 3 Charge-to-sanction hazard rate and ageing non-convicted population sanction risk for 'CSA+' offence list**



The effect of using this comparator line would be that both measures of risk in the arrestee group, although becoming closer over time to that observed in the comparable general population, would appear to remain significantly higher five years after the initial charge event. It is difficult to forecast the future profile of arrestee sanction risk with confidence. However, the shape of the hazard curves at the five-year point would then suggest that convergence might only occur a long time into the future, and in fact might never happen.<sup>17</sup> This would then imply that the risk of subsequent sanction of the arrestee group would always be higher than that of the comparable general population. There are significant uncertainties in estimating general population conviction risks which exclude individuals with previous convictions, so this example is provided only for illustration. However, it does serve to demonstrate the potential effect of the choice of comparator group on the results and any subsequent inferences that are drawn.

<sup>17</sup> Blumstein and Nakamura (2009) and Kurlycheck *et al* (2006) considered the risk of re-arrest following an initial arrest event, rather than the risk of sanction following charge. Soothill and Francis (2009) considered the risk of court conviction following an initial conviction event. Therefore, none of these studies is directly comparable with the analysis presented here. However, all three studies found that hazard rates converged only after considerable lengths of time. Blumstein and Nakamura (2009) found no convergence after twenty years for some analysis scenarios, although did not report whether the differences at this point were statistically significant. Soothill and Francis (2009) concluded that, 'if persons remain crime-free for a period of, say, ten years after the age of 20 years, then those with an offence record in their youth and/or early adulthood have similar but not quite equal likelihoods of a further conviction compared with the on offending population of their age' (p387).

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**Figure 4 Arrest-to-sanction hazard rate and ageing non-convicted population sanction risk for 'CSA+' offence list**

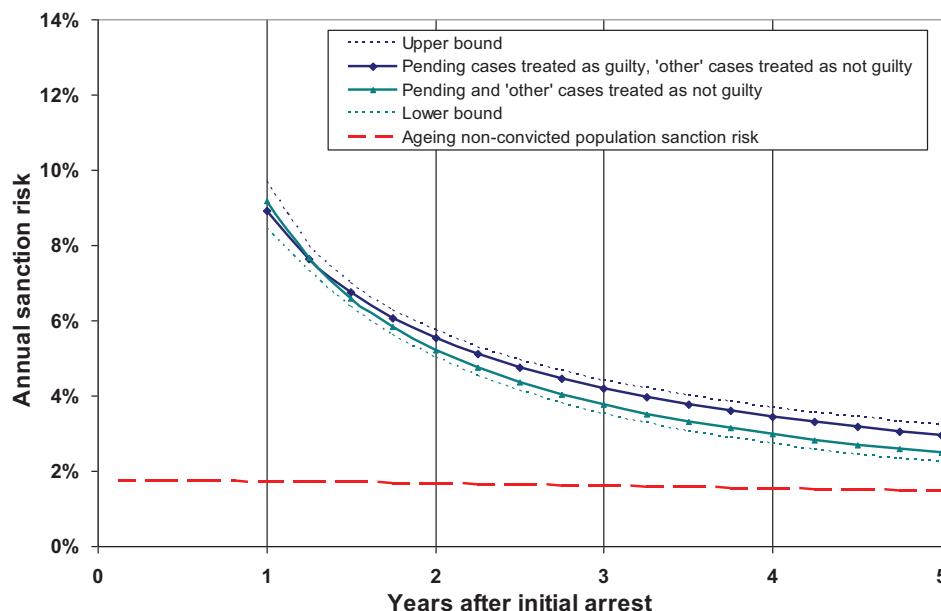


Figure 4 provides the same comparison with the ageing, non-convicted population but for the complete arrestee cohort including those not charged with an offence (Figure 2). The same general results are found, although the 'excess' risk estimated at the five year point are somewhat lower for the general arrestee group than for the charge sub-group.

*How does the risk of sanction following arrest and charge with a serious offence compare with the risk of sanction following arrest and charge with a non-serious offence?*

There is no single definition of what constitutes a serious offence. Three possible definitions are provided by the following existing legislation:

- The Scottish qualifying list, which focuses on sexual and violent offences, accordingly including common assault (a summary offence) but excluding robbery and burglary (both indictable and punishable with a custodial sentence);<sup>18</sup>
- Indictable offences, which are more serious than summary offences and can be tried in a Crown Court, but which also include some less serious offences which are 'triable either way' (e.g. criminal damage);
- The CSA list plus robbery, which can be *broadly* categorised as those more serious offences with one or more (potential) victims.

Table 2 presents sanction risks for the arrestee group and the comparator general population ('baseline' in the table), and the ratio of the two, evaluated

<sup>18</sup> Robbery is excluded apparently despite the evidence which suggests that this offence can involve significant levels of violence, and harm, on average (Dubourg *et al.*, 2005).

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at the four-year point following an initial charge with no conviction, and the more general case of arrest with no further action.<sup>19</sup> It does this for the three definitions of serious offences and the implied associated non-serious group.

**Table 2 Sanction risks and risk ratios by definition of qualifying offence**

Qualifying offence definition	Qualifying offences			Other offences		
	Hazard	Baseline	Ratio	Hazard	Baseline	Ratio
<i>Charged but not convicted</i>						
Scottish list	3.2%	2.6%	1.2	2.8%	2.7%	1.0
CSA list plus robbery	4.3%	3.1%	1.4	2.6%	2.6%	1.0
Indictable offences	3.5%	2.8%	1.2	2.3%	2.5%	0.9
<i>Arrested with no further action</i>						
Scottish list	3.0%	2.7%	1.1	3.4%	3.3%	1.0
CSA list plus robbery	3.5%	3.2%	1.1	3.2%	3.1%	1.0
Indictable offences	3.3%	3.1%	1.1	3.3%	3.2%	1.0

Table 2 shows that the risk ratios at four years are very similar between those arrested for qualifying and non-qualifying offences, and that this similarity is robust to variations in the definition of 'serious'. The risk ratios at four years for those charged with qualifying and non-qualifying offences are also similar. However, absolute and relative risks of sanction for the charged group do seem to be slightly higher for qualifying offences, particularly for the 'CSA+' scenario (ratio of 1.4 for qualifying offences compared with 1.0 for other offences, and absolute risks of 4.3 per cent and 2.6 per cent respectively). Note, however, that these conclusions are not based on a formal statistical analysis of these differences in risk.

#### *How do sanction risks compare following different CJS events?*

Table 3 considers the risk of sanction following arrest with no further action; arrest and charge with no guilty verdict; a FPN; and, a proven offence. The risks presented in Table 3 are not calculated on the basis of a restricted set of qualifying offences (which largely explains any difference between risk estimates presented in Figures 1-4). A comparison of adult sanction risks and relative risks at the four-year point suggests no substantial difference between those arrested with no further action and those charged but not found guilty. The baseline risk estimate is slightly higher for the 'arrest with no further action' group, possibly reflecting the younger age profile compared with the 'charged not guilty' group (average age of 33 in the former case and 35 in the latter). There is less difference in hazard rates at the four-year point, however, resulting in a very slightly higher risk ratio for 'charged not guilty', but still not one which suggests the presence of 'excess' risk. This suggests that the behaviour of adults following any arrest (i.e. for any offence) with no further

<sup>19</sup> 'Sanction' here covers convictions and cautions (and the juvenile equivalents) and excludes FPNs. Estimated sanction risks exclude the impact of 'clock-resetting', which would vary depending on the assumed scope of the qualifying list. Baseline risk estimates include the effects of ageing, and is based on a population definition which includes individuals with previous sanctions. The same applies for subsequent comparative results in this section. Comments made above in relation to the choice of comparative general population group therefore apply.

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action is very similar to the behaviour of adults who are charged with any offence but not found guilty. However, Figures 1 and 2 and Table 2 suggest this is not the case when the restricted 'CSA+' set of qualifying offences is considered. Insufficient data exist to make any similar assessment for juveniles.

**Table3 Sanction risks and risk ratios following different CJS events**

Initial outcome	Juveniles			Adults		
	Hazard	Baseline	Ratio	Hazard	Baseline	Ratio
Arrest with no further action	7.4%	5.7%	1.3	2.6%	2.8%	0.9
Charged not guilty	Insufficient Data			2.4%	2.4%	1.0
Fixed Penalty Notice	7.1%	5.7%	1.2	3.6%	3.5%	1.0
Proven offence	9.5%	5.2%	1.8	3.4%	2.7%	1.3

Table 3 provides the same information, for both adults and juveniles, following a proven offence (conviction, caution or equivalent). Risk ratios for juveniles are 1.3 for the 'arrest with no further action' group and 1.8 for the 'proven offence' group. For adults, the ratios are 0.9 and 1.3 respectively, suggesting that relative risks are higher for the proven offence groups compared with those arrested with no further action, although not by a great amount. A comparison with the results for groups given a FPN suggests their relative risks are more similar to those of the arrestee groups than the conviction groups (ratios of 1.2 and 1.0 for juveniles and adults respectively). It should be recalled, however, that these comparisons are not based on formal tests of statistical significance, and do not relate to a restricted list of offences.

*How do conviction risks compare following different proven offences?*

Table 4 presents sanction risks and risk ratios, measured at the four year point, for adults and juveniles following cautions (or the youth equivalent) and non-custodial convictions for any offence. For both groups, results for first caution and first conviction are similar to each other. The results for a second caution and a first caution-first conviction combination are also similar to each other. For both groups, risks and ratios are higher for second caution, first caution-first conviction and second conviction than they are for a simple first caution or conviction. Risk ratios are highest for the second non-custodial conviction groups.

**Table 4 Sanction risks and risk ratios following proven offences**

Proven offence groups	Juveniles			Adults		
	Hazard	Baseline	Ratio	Hazard	Baseline	Ratio
First caution (or equivalent)	9.5%	5.2%	1.8	3.6%	2.8%	1.3
First non-custodial (NC) conviction	10.1%	5.9%	1.7	3.2%	2.6%	1.2
Second caution (or equivalent)	15.4%	5.6%	2.8	8.0%	3.8%	2.1
Caution then NC conviction	15.8%	5.9%	2.7	7.8%	3.7%	2.1
Second NC conviction	18.7%	5.9%	3.2	6.0%	2.7%	2.3

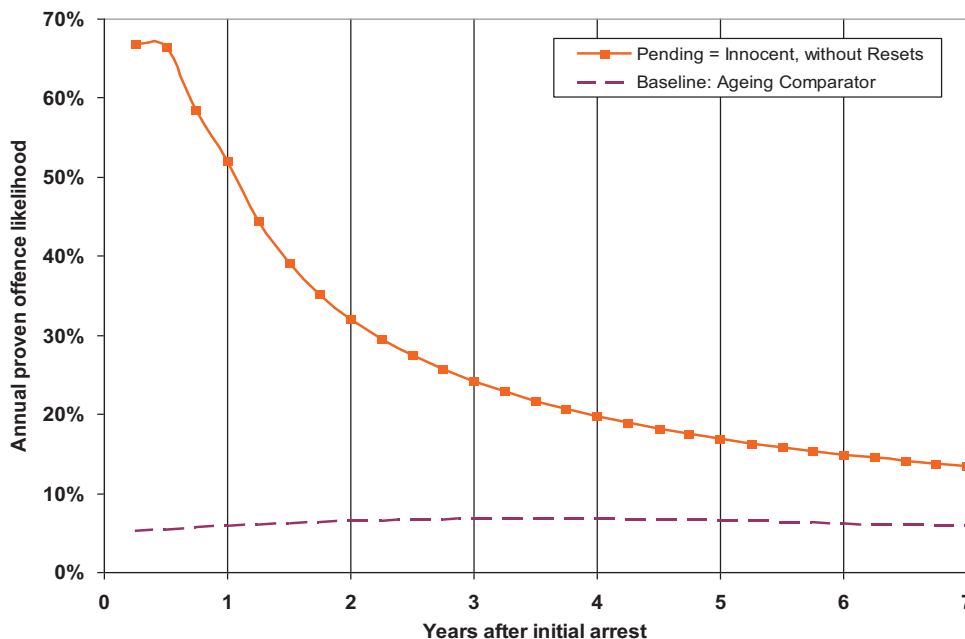
Comparing the data in Tables 3 and 4, risks and ratios are higher in all cases following a proven offence (first or second) than they are following an arrest or charge with no conviction. For adults, hazard rates and baseline risks are

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under three per cent at the four-year point following arrest or charge, with ratios around 1.0. Hazard rates following a first or second proven offence range from just over three per cent to eight per cent at the same point, with ratios from 1.2 to 2.3.

Further analysis suggests that sanction risks following a second proven offence might not converge with sanction risks observed in the general population, at least over relevant timescales. This is demonstrated in Figure 5 for the case of juveniles, which compares the risk of a second non-custodial conviction following a first non-custodial conviction against an ageing comparator line. Thus it can be seen that, by seven years after the first conviction, there is still a substantive difference in risks between the conviction group and general population group, and the curves appear almost parallel at this point, suggesting no obvious convergence in the 'near' future.

**Figure 5 Second-conviction hazard rate and ageing general population conviction risk for juveniles**



*How do the sanction risks of juveniles and adults compare?*

Tables 3 and 4 provide risk estimates and ratios for adults and juveniles separately. It can be seen from these results that, in all cases where estimates could be made, baseline risks and hazard rates at the four-year point following each initial CJS event are substantively higher for juveniles than for adults, as are the corresponding risk ratios. This is in line with a considerable body of academic literature which has found that early contact with the CJS is a strong predictor of more persistent and prolific offending careers (e.g. Farrington, 1992).



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### *Likely effect on these comparisons of excluding convicts*

It should be remembered that the preceding comparisons are in most cases made against general population definitions which include individuals with prior convictions. Excluding such individuals is likely to lower the comparator risk in all cases, and could mean that risks do not converge. It would also be expected to increase all of the risk ratios presented in Tables 2-4. It is possible (although by no means guaranteed) that the relativities between these ratios, on which the current comparative analysis has been based, might change, because the age and conviction profiles for different offence types also differ. However, it is not currently possible to estimate conviction risks which exclude the effects of prior convictions, with sufficient confidence or over reasonable timescales, for them to be the general basis for the analysis. Therefore, the current comparisons are likely to be the fairest possible at this point, but their limitations should be recognised.

## **Crime and Policing Analysis Home Office Science**

**September 2011**

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### Briefing on the September 2011 Analysis on DNA Retention

1. The Home Office analysis on DNA retention is based on data on arrests, charges and convictions obtained from the Police National Computer. The study compares groups of individuals' risk of subsequent contact with the criminal justice system (subsequent arrest, caution, conviction or some other disposal) with that of the general population.

2. Due to a lack of suitable data the analysis was not able to take formal account of other potentially relevant factors to indicate optimal retention periods (such as the impact of DNA retention on individual privacy). Therefore, the results should be described as *informing* policy, rather than providing any definitive answers.

3. In most respects, the evidence is broadly supportive of a policy of retention on charge without conviction for a restricted set of more serious offences, for a headline retention period of three years:

- The findings show that individuals who are convicted or cautioned have higher risks of subsequent offending than those who are charged but not convicted, implying differential retention policies for these groups' respective DNA records is desirable.
- The results suggest that the risk of offending for offenders charged, but not convicted, of a serious offence falls to the level present in the general population just over three years after the initial charge. The analysis can therefore be interpreted as providing support for a three year retention period for those charged but not convicted of serious offences. This however is in part dependent on the exact general population comparison group used in the analysis.
- The research offers some evidence, albeit less strong, that there is a case for focusing the retention policy on serious offences. Despite the generally accepted view that offenders do not 'specialise', the evidence identifies slightly higher risks of subsequent conviction for those charged with Crime and Security Act qualifying offences
- The research provides some evidence to support the proposed retention policy for individuals receiving penalty notices for disorder (PNDs). Their relative risk of re-offending for those with PNDs was found to be more similar to those arrested (not proceeded against) than those receiving a sanction, which supports the general principle of a shorter retention period for this group than for those with convictions.

4. The principal area where the research diverges from current policy is in relation to the treatment of **juveniles**. There is a range of factors that justify the more lenient treatment of juveniles, such as the 'particular position of children in society' highlighted by the European Court of Human Rights in its judgment in the case of *S and Marper*. The research into hazard rates does support the retention of juvenile DNA records for some period, but not a shorter DNA record retention period for juveniles than for adults, as the future offending risks for juveniles are in fact **higher** than for adults. Nevertheless, the factors noted above can be used as justification for departing from the evidence in this area.

# Northern Ireland Legal Services Commission

Northern Ireland Legal Services Commission  
2nd Floor, Waterfront Plaza  
8 Laganbank Road, Mays Meadow  
Belfast BT1 3BN

Telephone 028 9040 8888  
Fax 028 9040 8995  
Email: [accesstojustice@nilsc.org.uk](mailto:accesstojustice@nilsc.org.uk)  
[www.nilsc.org.uk](http://www.nilsc.org.uk)

lsc

NORTHERN IRELAND  
Legal Services  
Commission

The Committee Clerk  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

Your Reference

Our Reference CS/12/027

Date 31 August 2012

Dear Sir

**Re: Criminal Justice Bill**

I refer to your letter dated 11 July 2012.


On behalf of the Commission I would confirm we have no contrary views to the proposals contained in the consultation paper.

The Commission, as a matter of course, requests that a full Legal Aid Impact Assessment is completed if it appears that any proposals contained in consultation documents may result in new or additional criminal charges/reviews or civil litigation which may have an impact on the Legal Aid Fund. This provides the Commission with advance notice to ensure that a resource analysis can be completed and any impact can be included in the Commission's future financial forecasts.

It would appear that this might be the case in respect of the proposals outlined in the draft Criminal Justice Bill. In these circumstances it would seem prudent for a Legal Aid Impact Assessment to be completed in respect of the proposed Criminal Justice Bill.

I would like to take this opportunity to thank you for inviting the Commission to formally respond to the consultation paper.

Yours sincerely



**Noleen Smythe**  
Secretary to the Board

# Northern Ireland Local Government Association

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**From:** Karen Smyth <k.smyth@nilga.org>  
**Sent:** 31 August 2012 11:31  
**To:** +Comm. Justice Public Email  
**Cc:** Derek McCallan; Bethany Bradley  
**Subject:** Criminal Justice Bill call for evidence

Dear Christine

Thank you for your letter of 11 July, asking for views on the content of the Criminal Justice Bill. I have looked at the Bill and have discussed the clauses with the Manager of the NI Strategic Migration partnership, who is based at the NILGA offices. It is our understanding that the key purpose of the Bill is to transcribe EU requirements into regional law. We would have no particular comment to make on the content of the bill, but thank you for contacting us. We are keen to develop a relationship with the Committee, particularly on issues that impact directly on district councils, and I look forward to hearing from you in future.

Regards



Karen Smyth

Karen Smyth BSc (Hons), MBA  
Head of Policy  
NILGA  
Unit 5B Castlereagh Business Park  
478 Castlereagh Road  
Belfast, BT5 6BQ

Tel: 02890 798972  
Mobile: 07896466764  
Email: [k.smyth@nilga.org](mailto:k.smyth@nilga.org)



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# Northern Ireland Policing Board



**Brian Rea MBE JP**

Chair

Date: 10 September 2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
BT4 3ZZ

Dear Christine

## **Criminal Justice Bill**

Thank you for providing the Board with the opportunity to comment on the Criminal Justice Bill. Members discussed the Bill at the Board meeting on 6 September 2012 and agreed the response attached to this letter. I would be grateful if you would bring the response and this cover letter to the attention of the Committee for Justice.

Two of the key issues covered by the Bill - sexual offences and human trafficking - are very serious crimes which blight our community. Tackling these crimes requires a multi-agency approach which would arguably be enhanced if a statutory duty was placed upon public bodies, including the police, to have due regard to the likely effect on crime and anti-social behaviour when exercising their functions and to do all that they reasonably can to enhance community safety.

The Committee for Justice will be aware that such a duty was originally included at clause 34 of the Justice Bill but was subsequently removed from the final version of the Bill (which became the Justice Act (Northern Ireland) 2011). It seems that whilst the general principle behind 'clause 34' received wide support from the Assembly, it was concern regarding the workings of the principle, specifically the wide scope of the clause and the corresponding potential for costly legal challenges, that led to the clause being removed from the final version of the Bill.

The Board discussed 'clause 34' at its meeting on 6 September 2012 and agreed that, whilst there may be further discussion required in respect of specific details, it supported the general principle behind the clause. The Board agreed to raise the issue of 'clause 34' with the Committee for Justice when responding to the consultation on the Criminal Justice Bill.

The Board calls on the Committee for Justice to propose an amendment to the Criminal Justice Bill to include a 'clause 34' type duty on public bodies. As with the other provisions of the Bill, the 'clause 34' provision need not come into force until such day as the Department of Justice by order appoints, with the order containing such transitional, transitory or savings provisions as the Department thinks appropriate. This would give the Department and the Committee for Justice time to consider the specific workings of the duty but would reduce delay in implementing the provision once the finer details were agreed.

Given the concerns regarding the potential for costly legal challenge and the enforceability of such a duty, consideration could be given to introducing a complaints type mechanism for aggrieved individuals which would, at least in the first instance, avoid the need for that individual to seek a judicial remedy. An example of this in practice is the way in which complaints concerning the equality duties of public bodies are dealt with. Public bodies are required to submit an equality scheme to the Equality Commission outlining, amongst other matters, the way in which the public body complies with its duty under section 75 of the Northern Ireland Act 1998. The Equality Commission has statutory power under Schedule 9 of that Act to investigate complaints arising from a failure by a public body to comply with its equality scheme.

The Board will follow the progress of the Criminal Justice Bill as this important piece of legislation makes its passage through the Assembly. Members welcome any further engagement with the Committee for Justice on the matters covered by the Bill and also on the issue of a 'clause 34' type duty.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Brian Rea', with a horizontal line underneath.

**Brian Rea**

Chair

**Northern Ireland Policing Board**

Waterside Tower, 31 Clarendon Road, Clarendon Dock, Belfast BT1 3BG

**Tel:** 028 9040 8500 **Fax:** 028 9040 8533 **Textphone:** 028 9052 7668

**Email:** [information@nipolicingboard.org.uk](mailto:information@nipolicingboard.org.uk) **Web:** [nipolicingboard.org.uk](http://nipolicingboard.org.uk)

### **General Comments**

- The Board welcomes the opportunity to comment on the contents of the Criminal Justice Bill and is grateful to the Committee for Justice for agreeing to extend the deadline to accommodate the Board's response on this important piece of legislation.
- The Board recognises the need to introduce legislation in respect of each of the three key strands contained within the Bill, not least because they provide a response to a Supreme Court judgment, an EU Directive and a European Court of Human Rights judgment.
- The proposals to subject persons from European Economic Area (EEA) countries outside of the United Kingdom to sex offender notification requirements and the proposals to create offences in respect of trafficking outside of the United Kingdom are particularly relevant to Northern Ireland given the all-island nature of these crimes.
- The Board's submission is made without prejudice to individual political party submissions.

### **Sex Offenders (Clauses 1 – 4 and Schedule 1)**

- Schedule 1 of the Criminal Justice Bill contains a new Schedule – 'Schedule 3A' – to be inserted into the Sexual Offences Act 2003 (the 2003 Act). If implemented, Schedule 3A will provide a mechanism for the review of indefinite notification requirements for sexual offences. This will have implications for policing, not least because it specifies that it is the Chief Constable to whom application for review must be made.
- The Board's Human Rights & Professional Standards Committee has previously sought views from the PSNI on the proposals set out in the Department of Justice (DOJ) July 2011 consultation paper on sex offender notification. PSNI advised it was supportive of the proposals and that whilst the proposed manner of dealing with reviews would create additional duties for police officers involved in Public Protection, PSNI believed that the proposal outlined by DOJ was the most suitable way of ensuring that the Supreme Court ruling is complied with. The Board will continue to engage with PSNI on this issue.
- The review mechanism has been designed in response to a Supreme Court judgment which held that in the absence of a review mechanism for indefinite notification requirements, section 82 of the 2003 Act was incompatible with Article 8 of the European Convention on Human Rights (ECHR) – the right to respect for private and family life. However, simply putting a review mechanism in place is not in itself the end of the matter as regards human rights compliance. A range of issues will emerge each and every time the Chief Constable is required to determine a review application and the correct balance between upholding individual rights (of both perpetrators and victims) and protecting the public from harm must be struck. To that end, there are a number of inbuilt safeguards within the proposed review mechanism including:
  - The requirement upon the Chief Constable to discharge the notification requirements unless he/she is satisfied that the offender poses a risk of sexual harm and that the risk is such as to justify the notification requirements continuing in the interests of the prevention or investigation of crime or the protection of the public;
  - The list of factors in paragraph 3(2) of Schedule 3A which the Chief Constable must take into account when reaching a decision;
  - The limitation preventing the Chief Constable from delegating his functions to officers below Superintendent rank;
  - The requirement upon the Chief Constable, where he decides not to discharge notification requirements, to state his reasons in the decision notice to the offender;
  - The availability of review on application to the Crown Court;
  - The availability of a further review within 8 years of a decision not to discharge notification requirements; and



- The requirement that the Department of Justice issues guidance to both offenders and the Chief Constable.
- Clause 3 of the Criminal Justice Bill amends the Sexual Offences Act 2003 to ensure that relevant sexual offenders coming to Northern Ireland with convictions/cautions from European Economic Area (EEA) countries outside of the United Kingdom are subject to sex offender notification requirements. Such persons must notify the police within 3 days once he or she has stayed for a qualifying period. The fact that the police will no longer be required to apply to court for a notification order in respect of such persons ought to, in theory, deliver a cost saving and reduce bureaucracy. However, how will a failure to notify the police within 3 days be identified and enforced? How will relevant persons from EEA countries be made aware of their obligation to notify the police and are there any language/literacy/communication considerations in this regard?
- Clause 4 of the Criminal Justice Bill amends the Sexual Offences Act 2003 so that a person subject to a Sexual Offences Prevention Order (SOPO) can be required to undertake a particular action. A person will commit an offence if, without reasonable excuse, they fail to do anything which is required by the SOPO. Clearly any such positive obligations imposed must be lawful, proportionate and necessary, something which the police must bear in mind if suggesting conditions on application to the court for a SOPO in respect of a sex offender. Ultimately, it is for the court to decide what the terms of a SOPO will be.
- PSNI was supportive of Violent Offender Orders (VOOs) which were included in the DOJ's July 2011 consultation paper. VOOs are not unlike SOPOs and they place restrictions on offenders who pose a risk of very serious violent harm. PSNI believes that VOOs could be a particularly useful tool in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes. 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. The DOJ has indicated that VOOs will be included in future legislation although they have not been included in the Criminal Justice Bill. The Board believes that provision for VOOs should be included in the Bill. This could be, for example, on the basis that the relevant provisions will not come into force until such day as the DOJ may by order appoint.

#### **Human Trafficking Offences (Clauses 5 & 6)**

- The Board's Community Engagement Committee previously responded to the DOJ's April 2012 consultation on amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. In that response the Committee advised that the Board supported the introduction of the new human trafficking offences outlined in the consultation document. Those new offences are included in clauses 5 and 6 of the Criminal Justice Bill and are thus welcomed by the Board.
- **Trafficking for sexual exploitation;** it is already an offence to traffick someone into, within or out of the United Kingdom for sexual exploitation purposes. If implemented, clause 5 will make it an offence for a person to intentionally arrange or facilitate for a person to be trafficked into, within or out of a country other than the United Kingdom for the purpose of sexual exploitation.
- **Trafficking for other exploitation purposes:** it is already an offence to traffick someone into or out of the United Kingdom for exploitation purposes such as slavery and forced labour. It is also an offence to traffick a person within the United Kingdom for such purposes if the trafficker believed that the victim had previously been trafficked into the United Kingdom. Clause 6 will make it an offence for a person to intentionally arrange or facilitate for a person to be trafficked into, within or out of a country other than the United Kingdom for exploitation purposes. Clause 6 will also make it an offence to traffick someone within the United Kingdom for exploitation purposes – i.e. it will remove the

existing requirement for the offence of trafficking within the United Kingdom that the trafficker believed that the victim had previously been trafficked into the United Kingdom.

- These new offences, created by the Northern Ireland Assembly, purport to apply to British citizens, British subjects, British overseas territories citizens by virtue of a connection with Gibraltar, a person who at the time of the offence was habitually resident in Northern Ireland and to bodies incorporated under the law of a part of the United Kingdom. Clarification would be helpful on whether it is within the Assembly's legislative remit to create an offence in respect of all British citizens, subjects and overseas territories citizens, particularly where they have no connection with Northern Ireland and no element of the unlawful act takes place within Northern Ireland? For example, as currently drafted, the Bill appears to mean that if a British Citizen living in London, not connected in any way with Northern Ireland, trafficks a person for exploitation purposes within Spain, they will be committing an offence under the law of Northern Ireland. If similar legislation is introduced in England and Wales, it seems that the same person living in London, trafficking in Spain, will also have committed an offence under the law of England and Wales and could thus, in theory, be prosecuted twice within the United Kingdom, albeit within 2 different legal jurisdictions, for the same unlawful act. Should the new offences be limited to apply to all persons who at the time of the offence are habitually resident within Northern Ireland, to bodies incorporated under the law of a part of the United Kingdom with a registered office address in Northern Ireland or to situations where part of the chain of events amounting to the offence take place within Northern Ireland e.g. an email making arrangements is sent from within Northern Ireland. Clarification on these points would be helpful.

#### **Retention of fingerprints, DNA profiles etc. (Clause 7 & Schedule 2 & 3)**

- The Board's Human Rights & Professional Standards Committee responded to the DOJ's March 2011 consultation on the retention and destruction of fingerprints, DNA profiles and samples. In that response the Committee was supportive of the DOJ proposals. The legislative framework put forward in the Criminal Justice Bill is broadly the same as that included in the consultation document and, in the spirit of the European Court of Human Rights judgment in *Marper*, it distinguishes between the offences and the offenders, it distinguishes between adults and children and it provides for an independent Biometric Commissioner to be appointed. It will also apply to fingerprints, DNA profiles and samples currently retained, not just those taken after the legislation is enacted.
- It is proposed in the Criminal Justice Bill that the DNA profiles and fingerprints of persons arrested *but not charged* of a serious offence may be retained for up to 3 years, extendable on application to a court by a further 2 years, provided prescribed circumstances apply. DOJ is to set out these prescribed circumstances by order. This was not proposed in the framework set out in the consultation document, under which the DNA profiles and fingerprints of persons arrested but not charged would be destroyed immediately, regardless of seriousness of charge or extenuating circumstances. The change made in the Criminal Justice Bill was advocated by PSNI who felt that the threshold for retention in the consultation document for serious offences was too high. As a safeguard, the Bill proposes that if the Chief Constable wants to retain fingerprints or profiles of persons arrested for, but not convicted of, a serious offence to which prescribed circumstances apply, consent must be sought from the Biometric Commissioner.
- The Human Rights & Professional Standards Committee has engaged considerably with PSNI on the issue of DNA and fingerprint retention and has made recommendations in consecutive Human Rights Annual Reports since 2009. In particular, the Committee was keen that PSNI take proactive steps to review its policy to make it ECHR compliant rather than simply await a new legislative framework to be enacted – the Supreme Court has made clear that Parliament conferred a *discretion* on police services to retain data and that it is open to them to reconsider and amend their policy pending government action (*R (on the application of C) (FC) (Appellant) v The Commissioner of Police of the Metropolis* [2011] UKSC 21). PSNI's response to the Board to date has been that it intends to await

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the introduction of legislation before changing its policy. However, PSNI has fully consulted with the DOJ over the proposed legislative amendments and is broadly supportive of the DOJ proposals. More recently PSNI has advised that it has started to review and change its systems and processes in anticipation of the introduction of the new legislative framework.

- Given the time that has already passed since the ECtHR judgment was handed down in *Marper* (almost 4 years), it may be expected that once the Criminal Justice Bill becomes an Act, there will be no undue delay in the DOJ issuing the relevant orders to bring into force the provisions relating to the DNA and fingerprint.
- Once the new legislative framework is in force, it will require PSNI to determine whether to continue to retain, and if not to destroy, existing fingerprints and DNA material. According to the Explanatory and Financial Memorandum to the Criminal Justice Bill, this will cost the PSNI in the region of £2.5 million and will be sought from within existing resources for the 2013/14 financial year.
- Fingerprint and DNA retention is an issue which remains the subject of ongoing discussion between the PSNI and the Human Rights & Professional Standards Committee and it will be further reported upon in the Board's Human Rights Annual Report 2012.
- The DOJ sought views on the issue of photographs in its March 2011 consultation on DNA and fingerprint retention. Further to this, DOJ indicated that it was of the view that photographs cannot be treated in the same manner as DNA and fingerprints. DOJ concluded that photographs should not form part of the proposed new framework unless there is an authoritative judicial ruling to the contrary.
- In a recent English High Court case (*R (RMC and FJ) v Commissioner of Police of the Metropolis*, [2012] EWHC 1681 (Admin)), the court found that the Met's retention of the claimants' photographs, which had been taken upon the claimants' arrest but retained even after the claimants were released without charge, amounted to an unjustified interference with the claimants' right to respect for their private life and was a breach of Article 8 ECHR. The court rejected the Met's argument that keeping the photographs was necessary for preventing crime and disorder. The court suggested that the Met's unlawful policy should be revised within months, not years. Whilst this decision is not binding on the Northern Ireland Courts, the Northern Ireland High Court previously stated (in *JR 27's Application* [2010] NIQB 143 at para. 55 of the written judgment) that there is "substantial force in the view that the retention of the Applicant's photographic images by the Police Service [PSNI] for a minimum period of seven years, which may be extended indefinitely, unconnected in any concrete or rational way with any of the statutory purposes, interferes with his right to respect for private and family life guaranteed by Article 8(1)." In light of this, has the DOJ given any further consideration to introducing a legislative framework for the retention of photographs by the PSNI?

# Opportunity Youth



## Opportunity Youth Response to Committee for Justice Call for Evidence on the Criminal Justice Bill

**opportunity youth**

### **Introduction**

Opportunity Youth is Northern Ireland's leading provider of support services to young people, adult offenders and families in the community. It is our mission to help those we work with make the most of life's opportunities and be the best they can be. Our services include drugs and alcohol treatment programmes, mental and sexual health advice, training and employment opportunities for those young people classed as 'not in education, employment and training' and youth justice provision including work in Hydebank YOC, HMP Magilligan, HMP Maghaberry, probation work and youth conferencing. In addition, to the three prison sites, Opportunity Youth has offices in Belfast, Derry, Omagh, Augher, Lurgan and Armagh.

Opportunity Youth welcome the invitation from the Northern Ireland Assembly's Committee for Justice to respond to the consultation exercise on the Criminal Justice Bill. This paper will outline our position in relation to the Bill and our assessment of their benefit or otherwise for the young people and adults that we work with and represent.

### **Context**

Opportunity Youth was founded in 1993 with a view to providing a comprehensive range of personal development and therapeutic services, dedicated to meeting the ever-changing needs of young people in Northern Ireland. As an award-winning regional organisation, we hold true to our core vision to make a positive impact on the lives of those we work with.

We continually seek to work with anyone who can benefit from our services. As a result of working together with young people, vulnerable adults and other organisations, Opportunity Youth constantly strive towards a better, brighter future for all ages in our society.

On an annual basis Opportunity Youth work with close to 17,000 young people and vulnerable adults both in the community and within Northern Ireland's prison population. Many of those who come into contact with Opportunity Youth are considered vulnerable and disadvantaged and will have come into contact with the criminal justice system or have the potential to do so.

Our response to this consultation reflects the needs and concerns of those young people and vulnerable adults who have experience or the potential to experience the criminal justice system

### **Criminal Justice Bill – Sex Offender Notification**

Opportunity Youth is broadly supportive of the Criminal Justice Bill's policy objectives in relation to Sex Offender Notification. Opportunity Youth recognises the significant public protection issues this extremely emotive and difficult issue raises. However, we believe it is only fair and correct as per the ruling of the UK Supreme Court that a review mechanism is introduced for indefinite notification as a possible aid to successful rehabilitation.

In addition, on the grounds of equality Opportunity Youth is in favour of the attempts to end notification for acts which are no longer offences especially in the case of abolished homosexual acts.

Furthermore, Opportunity Youth fully back measures that make offenders who come to Northern Ireland with convictions from other EEA jurisdictions subject to the notification requirements in place for domestic offenders.

### **Criminal Justice Bill – Human Trafficking Offence**

Opportunity Youth support the new offences created by this legislation. It is extremely important that Northern Ireland has a robust legal mechanism for dealing with such offences as very often the victims in these cases are young people, the vulnerable and the disadvantaged. Opportunity Youth note the planned introduction of a private members bill from DUP MLA Lord Morrow and would expect department officials to look closely at these plans to ensure consistency and co-ordination.

### **Criminal Justice Bill – Retention of Fingerprints & DNA**

Opportunity Youth is extremely concerned about the wide-reaching and potentially damaging consequences of some of the provisions contained within this bill in relation to the retention of fingerprints and DNA samples. Opportunity Youth believe that some of the proposals will have a disproportional negative effect on young people and could lead to increased stigmatisation, discrimination and disadvantage.

According to the Department of Justice, the PSNI currently maintains a fingerprint database of more than 450,000 prints from 240,000 individuals. Forensic Science Northern Ireland stores DNA profiles from 91,000 subjects and 18,000 crime scenes. The Committee and the Northern Ireland Assembly has already heard concerns from members regarding the size of this database. Raymond McCartney MLA has stated on the record that pro rata, the database here is 10 times bigger than in the United States and five times bigger than the European average. He added that it is estimated that perhaps one in five people whose profile is on the database have not been convicted. Given these figures, Opportunity Youth share these concerns given it would appear collection has been indiscriminate to date and firmly believe this practice seriously undermines the principle of presumption of innocence.

Opportunity Youth believe any disproportionate level of collection and retention of DNA and fingerprints of children and young people has the potential to contravene human rights legislation and cause future problems as organisations such as ourselves strive to help them break down barriers to employment and life achievement.

Furthermore, this bill contains for provisions around legal processes for children and young people in isolation from other consultations and debates such as those on the Criminal Record Regime and ongoing discussions on the age of criminal responsibility and review of youth justice.

In relation to children and young people the draft bill provides that:

- Children who are arrested for or charged with serious offences, but who are not subsequently convicted, will have their fingerprints or DNA retained indefinitely where they have more than one previous conviction for a minor offence. A minor offence effectively means any offence that is punishable by imprisonment;
- If a child or young person has no previous convictions and is charged with a serious offence, but not convicted, their fingerprints or DNA will be retained for a period of 3- 5 years;
- Where the child or young person has no previous convictions and is only arrested in relation to a serious offence, it will still be possible under certain circumstances (for their DNA or fingerprints to be retained for a period of 3 - 5 years);
- The Bill also allows for the indefinite retention of DNA or fingerprints where a child or young person is arrested for or charged with a minor offence and is not convicted, if they have more than one previous conviction for a minor offence.

If a child or young person is convicted of a minor offence following the taking of fingerprints or DNA and has a previous conviction for a minor offence, their fingerprints or DNA profile will be retained indefinitely. Opportunity Youth disagree with this approach and feel the retention

of DNA should bear some relation to the seriousness offence, be subject to strict periods of storage and continually reviewed.

In relation to adults, the draft bill allows for:

- The indefinite retention of fingerprints or DNA where arrested for or charged with a serious offence and not subsequently convicted, where the adult has more than one previous conviction for a minor offence, or has only one previous conviction for a minor offence which was committed when the adult was aged over 18;
- Where an adult has no previous convictions, there will be a 3-5 year retention of fingerprints and DNA for people arrested for, but not charged with, a serious offence in certain circumstances
- Where an adult has no previous convictions, there will be a 3-5 year retention of fingerprints and DNA profiles for people charged with, but not convicted of, a serious offence;
- Where an adult has been arrested for or charged with a minor offence, but not convicted, their fingerprints or DNA may be retained indefinitely if they have more than one previous conviction for a minor offence, or one previous conviction for a minor offence which was committed when the adult was aged over 18, and;
- Indefinite retention of fingerprints and DNA profiles for people convicted of minor offences – which effectively means any offence that is punishable by imprisonment.

The inclusion of minor offences or any offence punishable by imprisonment is so wide-reaching it has the potential to encompass a large section of society and people whose crimes are very much on the lower end of the scale such as fine defaulters. The principle of retaining such information indefinitely is contrary to much of the legislation governing the rehabilitation of offenders, which enables certain offences to be considered spent and removed from a person's criminal record. A tighter definition may be to have included all qualified recordable offences rather than a catch-all approach.

Opportunity Youth believe these proposals also undermine the presumption of innocence and due process for those who will have their fingerprints and DNA retained, despite not being subsequently convicted of an offence. In relation to children and young people specifically, Article 40 of the UNCRC affords all children the right to be presumed innocent until proven guilty according to law. The retention of the DNA and fingerprints of children, young people and adults, who have not been convicted of an offence, or may not even have been charged with an offence, entirely undermines their right to be presumed innocent until proven guilty.

It is particularly concerning that the Bill includes cautions for offences within the definition of persons convicted of an offence. This clearly suggests that a child or young person who has more than one caution as part of their criminal record will have their fingerprints or DNA retained indefinitely if arrested or charged with serious or even minor offences, or will have the material retained indefinitely if it is taken in relation to a second minor offence for which they are given a caution, having already received a caution previously. We believe this to be an entirely disproportionate, running contrary to the purpose of a caution, which is to divert children away from the criminal justice system.

For adults who have one caution for a minor offence as part of their criminal record, and who received that caution for an offence that was committed when they were over 18, their fingerprints or DNA will be retained indefinitely when arrested for or charged with serious or minor offences even though they are not subsequently convicted. An adult who has their fingerprints or DNA taken in connection with a minor offence and receives a caution for that offence will have their fingerprints or DNA retained indefinitely. This again appears to be ill-measured and over the top.

Opportunity Youth also seek further clarity around the appeals process. There would appear to be inherent right to appeal retention. An appeal seems only available in the instances where a Chief Constable seeks leave to extend three-year retention by a further two years. Appeals should be available in all cases.

Opportunity Youth fundamentally disagree with the need for the introduction of a biometric commissioner. It is our view that the courts should be the ultimate arbiter if what should or should not be retained.

In conclusion, Opportunity Youth believe the committee should seek oral evidence before proceeding further.

# Police Service of Northern Ireland

Personal, Professional, Protective Policing



**GEORGE HAMILTON  
ASSISTANT CHIEF CONSTABLE**

Our Ref: 12\7291

24 September 2012

Ms Christine Darrah  
The Committee Clerk  
Room 242  
Parliament Buildings  
Stormont  
Belfast

Dear Christine

Thank you for the invitation to comment to the Justice Committee on the Criminal Justice Bill.

The Police Service of Northern Ireland has engaged fully with the Department of Justice (DoJ) as the provisions of this Bill have been developed.

The Bill is presented in three parts: Sex Offenders, Trafficking People for Exploitation and Retention of Fingerprints, DNA profiles, etc. I will deal with each in turn.

## **Sex Offenders**

The review of Indefinite Offender Notification came about as a result of a court ruling in what is known as the 'F & Thompson' case. As a result any sex offender who is currently required to 'notify' indefinitely (sentenced to 30 months or more) will now have the right to ask for this to be removed. In line with the rest of the UK this removal application will be possible 15 years after the individual has been required to notify after leaving prison (8 years for a person under 18 upon conviction). PSNI has been liaising with the DoJ as to the appropriate mechanism for such requests and any subsequent appeals mechanism. This is reflected in Schedule 1 and I am content with these proposals.

Ending notification requirements for acts which are no longer an offence will align Northern Ireland with UK legislation and reflects the changes in legislation around offences previously described as 'homosexual offences', including the current lower ages of consent. PSNI fully supports these changes.

The drafting of offences committed in an EEA State other than the UK was introduced following a request by PSNI. This request was made following research carried out by PSNI and An Garda Síochána (AGS) as part of the work of the Inter-Governmental Working Group on Public Protection around harmonisation of legislation. Currently, if



**Assistant Chief Constable's Office**  
PSNI Headquarters, 65 Knock Road, Belfast BT5 6LE  
Telephone: (028) 9056 1596 Fax: (028) 9070 0192  
E-mail: george.hamilton@psni.pnn.police.uk





PSNI become aware of a qualifying sex offender outside the UK taking up residence in Northern Ireland they must first apply to the court to require them to notify/register within the UK. In the Republic of Ireland any such offender must register with the AGS within 7 days or they commit an offence. PSNI had asked that the law would apply to offences in all countries outside the UK but the DoJ, on advice of the Attorney General, have drafted as outlined. Whilst PSNI would like to see the law apply to all offences in all countries outside the UK we welcome the current draft as this will at least allow PSNI to more effectively deal with EEA offenders. This applies especially to those who have been convicted in the Republic of Ireland, where the majority of those previously required to notify in this manner had offended, eg AGS advise PSNI of a sex offender moving from Dundalk to Dungannon - the PSNI will be able to require that person to notify and come under UK legislation without requiring to summons them to court for judicial ruling.

### **Trafficking people for Exploitation**

PSNI acknowledges the need to legislate to give effect to the Council of Europe Convention on Action against Trafficking in Human Beings CETS No. 197.

The Bill creates an offence of trafficking a UK resident within the UK (who was not previously trafficked into the UK) and an offence of trafficking outside the UK. PSNI supports these measures as additional means of tackling certain aspects of human trafficking.

I would however recommend that there is consistency in the Bill in referring to 'Human Trafficking' rather than, at times, 'trafficking people'. This consistency would ensure the Bill reflects accepted terminology in this area and also avoids confusion with the separate offence of 'people smuggling'.

### **Retention of fingerprints, DNA profiles, etc**

The DNA database and Fingerprint collection are major tools in the PSNI's continued efforts to protect the public. The DNA database currently generates approximately 700 'person to scene hits' annually, assisting in crime detection for PSNI for both volume and serious crime investigations. The Fingerprint Bureau generates approximately 2,200 'person to scene' identifications each year

PSNI has fully engaged with stakeholders, including the DoJ, as the retention framework in the Bill has been developed. We have also made a full submission to the formal consultation on the proposals for the retention and destruction of fingerprints and DNA.

Again the imperative of various judgments, notably *S and Marper v UK*, to effect change in this area is acknowledged. The PSNI has followed closely the various developments in the Crime and Security Act 2010 and the Protection of Freedoms Act 2012 and the resultant retention framework for England and Wales. Whilst we previously noted in our submission to the DoJ that any change away from the current comprehensive framework risks destruction of samples and records that may leave crime undetected we also

**Assistant Chief Constable's Office**  
PSNI Headquarters, 65 Knock Road, Belfast BT5 6LE  
Telephone: (028) 9056 1596 Fax: (028) 9070 0192  
Email: [george.hamilton@psni.pnn.police.uk](mailto:george.hamilton@psni.pnn.police.uk)



acknowledged that how this is balanced against the rights of the public to have their records destroyed should be a matter of political judgment.

I do consider it an advantage that the provisions in the Bill reflect those in the Protection of Freedoms Act, as when we share information with England and Wales the similar regimes will make it less likely to attract a legal challenge than if there were significant areas of difference.

One area of concern is that of the definition of 'prescribed circumstances' that will permit the retention of material from someone arrested for, or charged with, a qualifying offence in limited circumstances and for a limited period under the provisions in Schedule 2 of the Bill, as inserted into the Police and Criminal Evidence (NI) Order 1989 as Art 63D. Prescribed Circumstances will be defined and made by a separate Order but will be analogous to Section 3 of the Protection of Freedoms Act. This permits application for retention to be made to an independent commissioner where the victim is (a) under 18; (b) a vulnerable adult; or (c) associated with a person to whom the material relates. A further provision of S.3 permits an application to retain material where, when the foregoing conditions do not exist, the Chief Officer of police considers it necessary to assist in the prevention or detection of crime. A similar provision, although perhaps not as encompassing, would be to permit the Chief Constable to make an application for retention where a risk of harm exists and he considers it necessary for Public Safety. Whilst this is still to be decided for the Northern Ireland retention framework, and as noted will be made by Order rather than in the Bill itself, I would be concerned that the Order reflected the provision in the Protection of Freedoms Act as closely as possible so as to give maximum protection within the framework.

The retention framework in the Bill is complex and offers PSNI many challenges in terms of technology, decision making and resource allocation that the current framework does not. Currently the database contains approximately 123,000 DNA profiles and approximately 1,600 suspect to scene comparisons are carried out per annum. The process of legacy weeding and business as usual management of the new procedures will inevitably add expense to the operation and management of our current DNA database and fingerprint collection to ensure that material retained complies with the new framework.

I trust you will find this of some assistance to your deliberations on the Bill and we will of course continue to assist the DoJ as this matter progresses.

Yours sincerely



**GEORGE HAMILTON**  
**Assistant Chief Constable**  
**Service Improvement Department**

**Assistant Chief Constable's Office**  
PSNI Headquarters, 65 Knock Road, Belfast BT5 6LE  
Telephone: (028) 9056 1596 Fax: (028) 9070 0192  
Email: [george.hamilton@psni.pnn.police.uk](mailto:george.hamilton@psni.pnn.police.uk)



# Probation Board for Northern Ireland



80/90 North Street  
Belfast  
BT1 1LD

Tel: 028 9026 2400

Email: [brian.mccaughey@pbni.gsi.gov.uk](mailto:brian.mccaughey@pbni.gsi.gov.uk)

Web: [www.pbni.org.uk](http://www.pbni.org.uk)

Brian McCaughey, Director of Probation

31 August 2012

The Committee Clerk  
Room 242  
Parliament Buildings  
Ballymascaw  
Stormont  
Belfast  
BT4 3XX

BY E-MAIL

Dear Ms Darrah,

**RE: Criminal Justice Bill**

Further to your letter dated 11 July 2012, thank you for the opportunity to provide comments in relation to the Criminal Justice Bill.

The Probation Board for Northern Ireland welcomes this legislation and in particular articles relating to sex offenders; the implementation of which will enhance the operational management of such offenders.

In the related Department of Justice consultation exercise (October 2011), a proposal was included to amend Part 2 of the 2003 Act; whereby an offender who is subject to notification requirement would have to notify PSNI if they resided in a household where there is a child under 18. PBNI supported this proposal; however it does not appear in the draft Bill.

Clarification would also be helpful with regard to the omission of a requirement on qualifying offenders to notify on a weekly basis, their whereabouts, if they had no fixed abode, which also featured in the previous consultation in this regard. PBNI is of the view that while certain exceptions, for example for offenders residing in hostels or in hospital care, would be useful to this proposal, it would be a useful requirement.

Yours sincerely

**Brian McCaughey**

Director

## Public Prosecution Service

The Committee Clerk  
Room 242, Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

30 August 2012

Dear Ms Darrah

I refer to your correspondence to the Director dated, 11 July 2012, inviting views/comments on the contents of the proposed Criminal Justice Bill. The Director has asked me to respond.

In considering the proposed Bill I am mindful that proper role of the PPS is to provide views from a prosecutorial perspective.

For drafting purposes, it is noted that clause 3 inserts a new section 96A into Part 2 of the Sexual Offences Act 2003 relating to "Offences committed in an EEA State other than the United Kingdom". It appears that a section 96A already exists in the Sexual Offences Act 2003, although it applies only to Scotland, referring to "powers of entry and examination of home address", which was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006.

Clause 5 creates a new offence of "Trafficking outside the UK for sexual exploitation". As this new offence is a hybrid offence (triable either summarily or on indictment) it is considered that it would be necessary to ensure that it is added to the list of hybrid offences which the Director of Public Prosecutions may refer to the Court of Appeal if he considers that a sentence is unduly lenient. This will ensure consistency with the existing trafficking for sexual exploitation offences.

Should you have any queries please do not hesitate to contact me.

Yours sincerely

**Mairead Lavery**

Senior Public Prosecutor  
Tel: 028 90897112

## South Eastern Health and Social Care



The Committee Clerk  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

31 August 2012

Dear Sir/Madam

**Criminal Justice Bill**

The Trust welcomes the opportunity to respond to the above consultation.

The Trust has considered the consultation document and has no further comments.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elaine Campbell', is written over a white background.

**Elaine Campbell**

Corporate Planning & Consultation Manager

South Eastern Health and Social Care Trust, Strategic & Capital Development Department,  
Kelly House, Upper Newtownards Road, Dundonald, Belfast BT16 1RH, Tel: 028 9055 0434

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# Superintendents' Association of Northern Ireland

**Police Superintendents' Association of Northern Ireland**  
*Advising, Supporting, Representing*



The Committee Clerk  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

28 August 2012

Dear Christine

**Criminal Justice Bill**

Thank you for your letter of 11 July 2012.

The Superintendents' Association of Northern Ireland has no submission to make in relation to the Draft Justice Bill.

Yours sincerely

**J A Kearney**  
Superintendent  
Honorary Secretary

The Honorary Secretary, Superintendents' Association of Northern Ireland,  
The Gate Lodge, PSNI College, Garnerville Road BELFAST BT4 2NX  
Tel:- 028 9092 2201, Fax:- 028 9092 2169  
E-mail:- mail@policesuperintendentsni.org

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# Women's Support Network

Downtown Women's Building  
109-113 Royal Avenue  
Belfast  
BT1 1FF

T: 028 9023 6923

W: [www.wsn.org.uk](http://www.wsn.org.uk)

## **Written Evidence to the Committee for Justice on the Criminal Justice Bill**

August 2012

### **Introduction**

- 1.1. The Women's Support Network (WSN) welcomes the opportunity to make this written submission.
- 1.2. The Women's Support Network (WSN), established in 1989, is an infrastructural umbrella organisation, which provides support services to, and represents, 62 community based Women's Centres, women's groups and projects, and women's infrastructure groups and 22 associated members across Northern Ireland (see Appendix 1).
- 1.3. Our members provide a wide range of women-centred front line services across Northern Ireland, including:
  - Specialist Advice
  - Childcare and Family Support
  - Counselling, Support and Advocacy
  - Complementary Therapies
  - Training & Education
  - Health & Wellbeing Programmes
  - Personal Development & Employment Support
  - Volunteering, Leadership & Empowerment
- 1.4. WSN aims to achieve social, political and economic justice through the promotion of the autonomous organisation of women. The Network aims to strengthen the collective voice of women's groups and to promote and develop networking opportunities, to enable collective action and to impact upon policy and decision making processes. WSN provides an accessible, feminist, relevant and high quality support service and resource for its member groups. The Network is also an important information resource on issues relevant to community based women's organisations and for other infrastructure groups, nationally and internationally.
- 1.5. Over the past 30+ years, the community based women's sector has developed a range of childcare, support, advice, and education & training services in response to the needs they identified at a grass roots level. Women's groups continue to meet the particular needs of women and their children living in areas considered to be some of most affected by the conflict, and recognised as some of the most disadvantaged areas across Northern Ireland today.
- 1.6. Network members are actively engaged with their local communities, cross-community initiatives and regional structures throughout Northern Ireland.

## 2.0 Comments

### **Our comments relate only to DNA profiles and fingerprinting taken from children and young people.**

WSN does have concerns about the taking of fingerprints and DNA profiles from samples taken from children and young people and the retention of this material. We believe this process is in breach of children's rights standards.

Through a FOI request by the Pat Finucane Centre, it established that widespread retention of DNA of children by the PSNI in cases where no conviction or cautioning has followed. *'In total, DNA is held on at least 3,065 under 18's, of whom 1,119 have no convictions or cautions.'*<sup>1</sup> The Centre described this as:

*"...a serious infringement of the rights of these children. We do not question the need to retain the DNA of serious violent and/or sex offenders but to maintain records on children who have not been convicted of any offence is bizarre."*<sup>2</sup>

An article published in The Belfast Telegraph in 2011 indicated that profiles from 91,327 people were on the DNA database in late 2010. Of these, 34,130 belonged to a person who was not charged or reported and had been released unconditionally. They included samples from 228 children aged between 16 and 18, and 92 samples from children aged between 10 and 15.<sup>3</sup>

Concerns over this practice has also been expressed by the Northern Ireland Commissioner for Children and Young People has, calling on both the PSNI and Policing Board to reconsider the retention of DNA of under 18's and pointing out that it potentially breaches Articles 16 and 40 of the UNCRC.<sup>4</sup>

We would remind the Committee of Article 40 of the UNCRC which places an obligation on state parties to recognise the right of all children, even those who have infringed the penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, and in a way which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. The Committee on the Rights of the Child, comments:

*"The Committee reminds States parties that, pursuant to article 40 (1) of CRC, reintegration requires that no action may be taken that can hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity of the child. For a child in conflict with the law to be dealt with in a way that promotes reintegration requires that all actions should support the child becoming a full, constructive member of his/her society."*<sup>5</sup>

WSN welcomes the opportunity to submit this written evidence and we are happy to further discuss these issues if required.

1 The PSNI has indicated that this figure may be higher: "there are a further 620 DNA records on a separate system which would have to be manually checked against the records held on the main system to ensure there is no duplication" Statewatch, 2006.

2 Statewatch 2006

3 Belfast Telegraph 'Police face DNA data wipeout: European ruling may force PSNI to delete a third of profiles it holds' by Adrian Rutherford, Wednesday, 16th March 2011.

4 NICCY, 2006

5 Paragraph 58 (a), CRC/15/Add.188, 4 October 2002 and Para 27 and 77 and 29 CRC/C/GBR/CO/4, 3 October 2008.





Northern Ireland  
Assembly

Appendix 4

# Northern Ireland Assembly Research Papers





Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

Paper 45/11

24 February 2011

NIAR 172-11

**Fiona O'Connell**

# Mechanisms for Review in Sex Offenders Register Systems

## 1 Introduction

A ruling by UK Supreme Court has established that indeterminate notification requirements in Section 82 of the Sexual Offences Act 2003 are incompatible with Article 8 of the European Convention of Human Rights (ECHR). The Home Secretary, Teresa May has announced more stringent rules in England and Wales including that offenders can apply for consideration of removal after waiting 15 years after release from custody, with no automatic appeal.<sup>1</sup> It has also been suggested in press coverage that the Government is not legally required to “change course”.<sup>2</sup> This briefing paper provides information on mechanisms for review of notification requirements in sex offender registration schemes in the Republic of Ireland, Canada and France.

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1 Statement to Parliament, 16 February 2011  
<http://www.homeoffice.gov.uk/publications/parliamentary-business/oral-statements/sex-offender-statement/>

2 The Guardian Newspaper, This is not the way to keep us safe from sex offenders: Cameron's stand against paedophiles is more to do with ditching the Human Rights Act than protecting victims”, February 18 2011

## 2 Republic of Ireland

The current sex offender registration system in the Republic of Ireland was introduced under the provision of the Sexual Offences Act 2001. The legislation makes provision for sex offenders on release from prison to notify the Garda Síochána where they are living and addresses if leaving the state for more than seven days. Sex offenders are subject to the requirements of the legislation for the following periods:<sup>3</sup>

- (a) An indefinite period if the sentence imposed on the person in respect of the offence concerned is life imprisonment or for a term of more than two years;
- (b) 10 years if the sentence imposed on the person in respect of the offence concerned is one of a term of imprisonment for a term or more than six months but not more than two years;
- (c) 7 years if the sentence imposed on the person in respect of the offence concerned is a term of imprisonment of six months or less;
- (d) 5 years if the term of imprisonment imposed on the person is suspended or is a sentence other than imprisonment.

The legislation also makes provision for persons subject to the legislation for a period of an indefinite duration to apply to the Court for an order “discharging the person from the obligation to comply with the requirements on the ground that the interests of the common good are no longer served by his or her continuing to be subject to them.” The legislation sets out that an application shall not be made before the expiration of the period of 10 years from the date of the applicants release from prison.<sup>4</sup> At the hearing, a Superintendent or member of the Garda Síochána shall be entitled to appear and be heard at the hearing. In considering an application, the court may require to be adduced evidence, including expert evidence with regard to whether or not the interests of the common good would any longer be served by the applicant continuing to be subject to the notification requirements.<sup>5</sup>

## 3 Canada

The Criminal Code provides that where a court imposes a sentence for a sex offence, it will make an order requiring a person to comply with the Sex Offender Registration Act 2004. The Code provides that sex offenders are required to remain registered for one of three periods:<sup>6</sup>

- End 10 years after the order was made for summary conviction offences and offences with two and five year maximums
- Ends 20 years after the order was made for offences carrying a 10 or 14 year maximum sentence
- Applies for Life for offences with a maximum life sentence or where an order has been made for life.

The Code provides a mechanism in the form of termination orders. The Code states

*“the Court shall make a termination order if it is satisfied that the person has established that the impact on them of continuing the order or orders and any obligation including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective investigation of crimes of a sexual nature, to be achieved by*

3 Section 8 (3) of the Sex Offenders Act 2001 <http://www.irishstatutebook.ie/2001/en/act/pub/0018/sec0011.html#sec11>

4 Section 11 of the Sex Offenders Act 2001 <http://www.irishstatutebook.ie/2001/en/act/pub/0018/sec0011.html#sec11>

5 Section 11 of the Sex Offenders Act 2001.

6 Para 490.013 of the Canadian Criminal Code

*the registration of information relating to sex offenders under the Sex Offender Information Registration Act.*<sup>7</sup>

A person subject to an order to comply with the Sex Offender Information Registration Act may apply for a termination order after the following periods of time:<sup>8</sup>

- If five years have elapsed since the order was made in the case of an offence prosecuted summarily or if the maximum term of imprisonment was two or five years;
- If ten years have elapsed since the order was made in the case of offences carrying 10 or 14 year maximum penalties;
- If 20 years have elapsed since the order was made for offences involving life imprisonment or if an order has been made for life.

## 4 France

In France, the current sex offender's registration system is the National Automated Sex Offenders Register and includes information on the offender's identity and address. The Criminal Code of France makes provision for removal of information from the database on the death of the person concerned or after the following periods of time:<sup>9</sup>

- 30 years in relation to an offence punishable by ten years imprisonment;
- 20 years in all other cases.

According to the Code, neither amnesty, rehabilitation nor regulations leading to the erasure of criminal convictions lead to the erasure of the records.<sup>10</sup>

The Criminal Code also makes provision for an appeal in Article 706-53-10. The appeals procedure can be found in Annex A. This provision enables a person to request the removal of information or to correct information concerning them on the database. It would appear that the appeal procedure is open ended and depends on a number of factors, if the information is not correct or retention is not necessary for the purposes of the database, including of the nature of the offence, the age of the person at the time it was committed, the length of time that has passed since then, and the current character of the person concerned. A number of actors are also included in the Appeal procedure including: the District Prosecutor, the Liberty and Custody Judge and the President of the Investigating chamber. This is important given that the Home Secretary has said the final decision on whether a sex offender should remain on the register will remain with the police.<sup>11</sup>

### **Annex A- Article 706-53-10 of the Criminal Code, France**

Any person whose identity is registered in the database may request the district prosecutor to correct or order the erasure of information concerning him if this information is not correct or if its retention no longer appears necessary for the purpose of the database, in the light of the nature of the offence, the age of the person at the time it was committed, the length of time that has passed since then, and the current character of the person concerned.

The request for erasure is inadmissible while the records concerned are still current on certificate no.1 of the criminal record of the person concerned, or relate to judicial proceedings that are still current.

7 Para 490.016 of the Canadian Criminal Code

8 Para 490.015 of the Canadian Criminal Code

9 Note that this is an unofficial translation of the Criminal Code, Article 706-53-4 of the Criminal Code

10 Article 706-53-4 of the Criminal Code

11 Statement to Parliament, 16 February 2011

<http://www.homeoffice.gov.uk/publications/parliamentary-business/oral-statements/sex-offender-statement/>

If the district prosecutor does not order this correction or erasure, the person may seize the liberty and custody judge to this end, whose decision may be challenged before the president of the investigating chamber.

Before ruling on the correction or erasure request, the district prosecutor, the liberty and custody judge, or the president of the investigating chamber may carry out any checks they consider to be necessary, and in particular may order a medical examination of the person concerned. If the record concerns a felony or a misdemeanour punished by ten years' imprisonment and committed against a minor, the ruling to remove this from the database may not take place without such an examination. In the case provided for by the penultimate paragraph of article 706-53-5, the district prosecutor, the liberty and custody judge, and the president of the investigating chamber, seised in accordance with the provisions of the present article, may also order, at the request of the person concerned, that he need only present himself to the police or gendarmerie departments once a year to confirm his address.



Northern Ireland  
Assembly

## Research and Information Service Bill Paper

Paper 132/12

31 August 2012

NIAR 517-12

**Fiona O'Connell**

# Criminal Justice Bill

This paper provides information on the clauses of the Criminal Justice Bill and policy proposals underpinning the Bill.

Research and Library Service briefings are compiled for the benefit of MLA's and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relate to our papers and these should be sent to the Research & Library Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to [RLS@niassembly.gov.uk](mailto:RLS@niassembly.gov.uk)

## Key Points

- The Criminal Justice Bill was introduced in the Northern Ireland Assembly on 25 June 2012. The Second Stage Debate took place on the 3 July 2012;
- The Bill has ten clauses and four schedules and covers three discrete policy areas: sex offenders; human trafficking; and DNA and Fingerprint retention.
- The Department of Justice consulted on policy proposals relating to the three strands contained within the Bill;
- In relation to the Department's proposals on the review mechanism for sex offender notification requirements, the majority of respondents supported the proposal but some had concerns whether it was sufficiently rigorous, others suggested that the review period should be based on the level of risk rather than an arbitrary statutory period.
- During the consultation period and the second stage debate, concerns were expressed that the Department's proposals on human trafficking were minimalist and following the approach adopted in England and Wales. A number of recommendations were made by respondents to strengthen the proposals. In addition, Lord Morrow has recently published a consultation paper on a Human Trafficking and Exploitation Bill which he intends to introduce in the Assembly and which is intended to improve assistance and support to victims, addresses demand and investigations and prosecutions.
- In relation to the consultation proposals on DNA and Fingerprint retention, a majority of respondents favoured the approach taken as an improvement on the current indefinite retention policy. However a number of issues were raised. One concern regarded the retention of material in juveniles and compliance with international human rights law. During the second stage debate, concerns were raised about the erosion of the presumption of innocence principle.
- The Department has indicated that the proposals have been screened out as not having an adverse impact on section 75 groups. The proposals are considered compatible with the ECHR and remedy incompatibilities highlighted by the UK Supreme Court and ECtHR.



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## Executive Summary

### **Sex Offenders**

The Bill provides for a review mechanism for sex offenders subject to indefinite notification requirements. The change in the law is required in order to comply with a UK Supreme Court ruling which held that the current policy of indefinite retention is incompatible with the European Convention on Human Rights. The Bill allows sex offenders subject to indefinite notification requirements to make an application for a review. The review period in the Bill is 15 years in adults and 8 years in under 18's, after the date of initial notification. These review periods are in line with other UK jurisdictions. The Bill also ends notification requirements for acts that are no longer offences and a requirement on sex offenders who commit an offence in an EEA State other than the United Kingdom to notify the police. Finally, the provisions allow Sexual Offences Prevention Orders to require a sex offender to perform a specified action for the purpose of protecting the public.

### **Human Trafficking**

The Bill creates two new trafficking offences in order to meet the requirements of the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims. The implementation deadline is 6 April 2013. Firstly the Bill makes provision that it will be an offence to traffick another person within the UK who was not already trafficked into the UK. The second allows for prosecution of a UK national or a person habitually resident in the UK who has trafficked someone anywhere outside the UK. The paper highlights concerns that the Department of Justice is taking a minimalist approach in complying with the Directive and a number of recommendations have been made to strengthen the proposals. Recommendations from respondents include: amendments to the Gangmasters' Licensing Act, increasing sentences in some areas, addressing the lack of a definition of trafficking, the treatment of victims in criminal proceedings (including protection from prosecution), the provision of a guardian or a representative for trafficked children and the creation of a national rapporteur. The Department indicated that these issues would be considered by the Organised Crime Task Force.

### **DNA and Fingerprint Retention**

The Bill replaces the current framework on the retention of DNA and fingerprints in order to comply with a ruling by the European Court of Human Rights (ECtHR). The ECtHR ruled that the blanket and indiscriminate nature of retention violates Article 8 (the right to private life) of the ECHR. The ECtHR paid particular attention to the Scottish model of retention in its ruling which the court found to be consistent with the Committee of Ministers' recommendation. The new retention framework contained within the Bill makes distinctions between those who are convicted and who are not convicted, adults and juveniles, serious offences and minor offences. The paper outlines concerns raised during the consultation period and the second stage debate. Concerns were raised during the consultation stage in relation to the retention of DNA and fingerprints of juveniles. Some respondents suggested that material should be destroyed on reaching the age of 18. Some suggested that the proposals do not fully engage with the UK's obligations under the United Nations Convention on the Rights of the Child (UNCRC), particularly Article 40 on the right to the presumed innocent until proven guilty. Some Members also raised concerns during the second stage debate that the presumption of innocence was being undermined.

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# 1 Introduction

The Criminal Justice Bill was introduced in the Northern Ireland Assembly on 25 June 2012. The Bill has ten clauses and four schedules which amend the current law. The first four clauses of the Bill deal with sex offender notification requirements in order to remedy a declaration of incompatibility ruling by the UK Supreme Court in 2010.<sup>1</sup> The clauses also introduce measures to increase public protection and strengthen the system of notification.<sup>2</sup> The second strand of the Bill introduces new offences to comply with the EU Directive on preventing and combating trafficking in human beings.<sup>3</sup> The third strand of the Bill deals with legislative proposals to replace the current framework on DNA and Fingerprint Retention policy in Northern Ireland. This change is required in order to comply with a ruling by the European Court of Human Rights (ECtHR) which found that indefinite retention of DNA and fingerprints are incompatible with Article 8 of the European Convention on Human Rights (ECHR).<sup>4</sup>

- The following sections will examine:
- The current legislative and policy framework background in each of the areas;
- The policy consultations underpinning the Bill conducted by the Department and issues raised by respondents;
- The proposed clauses of the Bill;
- Equality and human rights issues in relation to the Bill; and
- Financial implications associated with introducing the Bill.

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1 R (F and Thompson) v Secretary of State for the Home Department [2010] UKSC 17

2 Official Record of the Northern Ireland Assembly, Second Stage of the Criminal Justice Bill, 3 July 2012

3 EU Directive 2011/36 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims

4 S & Marper v UK, 4 December 2008, (Applications nos. 30562/04 and 30566/04)

## 2 Background to the Bill and Purpose of the Bill

### 2.1 Sex Offender Notification Requirements

The current legislation covering sex offender notification requirements in Northern Ireland is set out in the Sexual Offences Act (SOA) 2003. Part 2 of the legislation sets out the periods of notification which are attached to an offender which depends on the length and type of disposal given. The period of notification in the case of a person who receives a caution is two years.<sup>5</sup> Custodial offences of up to 6 months attract 7 years, up to 30 months, 10 years and over 30 months, an indefinite period.<sup>6</sup> All other disposals attract 5 years. The initial time allowed to give the required information specified to the police is 3 days.<sup>7</sup> It is an offence to fail to comply with the notification requirements: on indictment, the offence is punishable by a term of imprisonment of up to 5 years; and on summary conviction, the offence carries a term of imprisonment of up to 6 months.

The law has to change as a result of a UK Supreme Court ruling which established that indefinite notification requirements in Section 82 of the Sexual Offences Act 2003 are incompatible with Article 8 of the European Convention of Human Rights (ECHR). The appeals heard by the Supreme Court related to two independent claims for judicial review.<sup>8</sup> The first of the appeals was brought by an eleven year old boy who committed serious sexual offences including two offences of rape on a six year old boy. This applicant was convicted and sentenced to 30 months imprisonment on each count which brought the notification requirements into effect. The second applicant, Mr Thompson, was convicted of two counts of indecent assault on his daughter and sentenced to a 5 year term of imprisonment (to run concurrently). This sentence also brought the notification requirements into effect. In his judgement, Lord Philips highlighted that the issue was one of proportionality.<sup>9</sup> He stated that notification requirements interfere with the offender's article 8 rights and that this interference is in accordance with the law. The issue is whether the notification requirements under the Sexual Offences Act 2003 without any right to a review are proportionate to that aim.<sup>10</sup> Lord Phillips stated:

- “If some of those who are subject to lifetime notification requirements no longer pose any significant risk of committing further sexual offences, and it is possible for them to demonstrate that this is the case, there is no point in subjecting them to supervision or management or to the interference with their article 8 rights involved in visits to their local police stations in order to provide information about their places of residence and their travel plans. Indeed subjecting them to these requirements can only impose an unnecessary and unproductive burden on the responsible authorities. We were informed that there are now some 24,000 ex-offenders subject to notification requirements and this number will inevitably grow.”<sup>11</sup>

The Supreme Court highlighted that statistics show that 75% of sex offenders who were monitored were not reconvicted. Furthermore a number of jurisdictions have registration requirements for sexual offenders including Ireland, France, Australia, South Africa and Canada and almost all of these have provisions for review.<sup>12</sup>

5 Sections 80 (1) (d) and 82 of the Sexual Offences Act 2003

6 Section 82 of the Sexual Offences Act 2003

7 Section 83 of the Sexual Offences Act 2003

8 R (F and Thompson) v Secretary of State for the Home Department [2010] UKSC 17

9 Para 41

10 Para 41

11 Para 51

12 Para 57

The Criminal Justice Bill also makes minor amendments to allow for the removal of notification requirements for abolished sexual offences, to introduce provisions to make notification requirements more effective in respect of offenders coming to Northern Ireland and to make amendments to Sexual Offences Prevention Order provisions.<sup>13</sup>

## 2.2 Human Trafficking

The UK Government has opted into the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims. The deadline for implementation is 6 April 2013. Article 2 of the EU Directive requires Member States to legislate to make the following acts punishable:

*The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*

Article 3 also requires Member States to ensure that incitement, aiding and abetting or attempting to commit an offence is punishable. Article 4 sets out maximum penalties that Member States are required to legislate for in cases of trafficking: i.e. at least five years imprisonment and at least 10 years where the offence involved a child victim. Article 8 provides that victims should not be subject to prosecution or penalties where they have been compelled to participate in criminal activities. Article 9 requires Member States to ensure that the prosecution or investigation of offences in the Directive are not dependent on the reporting by a victim and should continue should a victim withdraw their statement. Article 10 requires Member States to establish their jurisdiction over offences in the Directive where the offence is committed in whole or part of their territory or where the offender is one of their nationals. A Member State must also inform the Commission where it takes the decision to establish further jurisdiction over the offences committed outside their territory where the offence is committed against one of their nationals or habitual resident of their territory or the offence was committed for the benefit of legal person established in its territory. Article 11 provides for the assistance and support of trafficking victims. Member States are required to ensure victims have access to legal counselling and legal representation including for the purposes of claiming compensation (Article 12). Article 13- 16 makes provision for assistance, support and protection to child victims of trafficking, including unaccompanied child victims. Article 17 requires Member States to ensure victims have access to existing schemes of compensation to victims of violent crimes of intent. Article 18 requires Member States to prevent trafficking by taking appropriate measures such as education and training to discourage trafficking. Member States are required to establish national rapporteurs or equivalent mechanisms to assess trends in trafficking and measuring results of anti-trafficking actions.

Northern Ireland is required to introduce new offences to comply with the EU Directive. These offences are set out in detail later sections of the paper.

## 2.3 DNA/ Fingerprint Retention Framework

The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) provides the legislative basis for police powers in Northern Ireland. Article 64 of PACE permits fingerprints or samples to be taken from a person in the investigation of an offence and that they may be retained after they have fulfilled the purposes for which they were taken.<sup>14</sup> This in effect

13 See Explanatory Memorandum of the Criminal Justice Bill , para 12 available at <http://www.niassembly.gov.uk/Documents/Legislation/Bills/Executive-Bills/Session-2011-12/niabill-10-11-15-efm.pdf>

14 Article 64 (1A) of PACE (NI) Order 1989

has allowed the police in NI to indefinitely retain fingerprints, DNA samples and DNA profiles obtained from persons arrested for any recordable offences, irrespective of whether or not it results in a conviction.<sup>15</sup> A recordable offence is defined as those that are recorded in Northern Ireland Criminal Records convictions for offences punishable by imprisonment or for certain specified offences.<sup>16</sup>

The legislative change is required as a result of a European Court of Human Rights (ECtHR) ruling *S & Marper v UK* in 2008.<sup>17</sup> The first applicant, Mr S was arrested at the age of eleven in 2001 and charged with attempted robbery. His fingerprint and DNA samples were taken. He was later acquitted. The second applicant Mr Marper was arrested in 2001 and charged with harassment of his partner. They would later reconcile and the charge was withdrawn. Both applicants asked for their fingerprint and DNA samples to be destroyed but in both cases the police refused. Their applications for judicial review of the decisions were rejected by the UK courts. The ECtHR agreed with the UK Government that the retention of DNA and fingerprint information pursues the legitimate aim of the detection and prevention of crime.<sup>18</sup> The court however stated that the question was not whether the retention of cellular samples, DNA or fingerprints was justified under the convention but whether the retention of such information of the applicants who have been suspected but not convicted, was justified under Article 8 (the right to private and family life).<sup>19</sup> The court, in ruling that there was a violation of Article 8, stated that it was struck with the blanket and indiscriminate nature of the power of retention in England and Wales.<sup>20</sup> England and Wales and Northern Ireland appear to be the only jurisdictions in the Council of Europe that allowed the indefinite retention of fingerprint and DNA material of any person of any age suspected of a recordable offence.<sup>21</sup> The court paid particular attention to the position in Scotland as it is part of the UK. Under the Criminal Procedure (Scotland) Act 1995, DNA samples and resulting profiles must be destroyed if the person is not convicted or is given an absolute discharge.<sup>22</sup> The Court noted that the Scottish Parliament voted to allow the retention of DNA of unconvicted persons only in the case of adults charged with violent or sexual offences and only then for three years only with the possibility to keep a DNA sample for a further two year extension with the consent of a Sheriff.<sup>23</sup> Sheriffs deal with the majority of civil and criminal cases in Scotland.<sup>24</sup> The ECtHR found that the Scottish model is consistent with the Committee of Ministers' recommendation R(92)1 which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data.<sup>25</sup>

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- 15 Department of Justice Briefing Paper to the Justice Committee on DNA/ Fingerprints Retention Policy in Northern Ireland , 23 June 2011.
- 16 Northern Ireland Criminal Records (Recordable Offences) Regulations 1989, Regulation 2
- 17 *S & Marper v UK*, December 2008 (Applications nos. 30562/04 and 30566/04) available at [http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"fulltext":\["S & Marper"\],"documentcollectionid":\["COMMITTEE","DECISIONS","COMMUNICATEDCASES","CLIN","ADVISORYOPINIONS","REPORTS","RESOLUTIONS"\],"itemid":\["001-90051"\]}](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{)
- 18 *S & Marper v UK*, December 2008, para 100
- 19 *S & Marper v UK*, December 2008, para 106
- 20 *S & Marper v UK*, December 2008, para 119
- 21 *S & Marper v UK*, December 2008, para 110
- 22 *S & Marper v UK*, December 2008, para 36
- 23 *S & Marper v UK*, December 2008, para 109
- 24 <http://www.scotland-judiciary.org.uk/36/0/Sheriffs>
- 25 *S & Marper v UK*, December 2008, para 110
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## 3 Consultations on policy proposals underpinning the Criminal Justice Bill.

### 3.1 Sex Offenders Notification Requirements

The Department of Justice consulted on its proposals for legislation in respect of sex offender notification requirements in July 2011. The consultation covered a number of areas including:

- Review Mechanism for Notification Requirements- The Department proposed to allow sex offenders who were on the register indefinitely to apply to the police to come off the register after they have been on it for 15 years after leaving prison. The offender can appeal the police decision to the Crown Court;
- Removal of notification for abolished sexual offences-The Department proposed to change the law to remove the notification requirement where the relevant offence is no longer a criminal offence, for example abolished homosexual offences;
- Notification of all foreign travel- The Department proposed to require sex offenders who are on the sex offender register to inform the police every time they intend to travel outside the UK, including travel to Ireland;
- Arrangements for offenders where they have no fixed abode- The Department proposed that any sex offender subject to notification requirements who has no fixed abode would have to notify the police every week where the offender could regularly be found over the next seven days, instead of annually;
- Offenders living in a household where there is a child under 18-The Department proposed that notified sex offenders would be required to inform police if they are staying in a house where there is a child or children under the age of 18 to allow the police to assess risk of harm and take preventative action;
- Offenders to notify personal details- The Department proposed that sex offenders would be required to give the police information about their passports, bank accounts and credit cards and produce some form of identification at every notification. This would enable the police to trace sex offenders who do not comply with notification requirements;
- Provisions for sexual offences prevention orders (SOPOs) to include positive actions - The Department proposed to allow the courts to include in a SOPO a requirement for a sex offender to take some specified action for the purpose of protecting the public from serious sexual harm, for example requiring a sex offender to provide information or to reside somewhere;
- Travel within the UK- Offenders would be required subject to notification to notify the police of intended travel within the UK of more than three days. The police would have to be notified in advance of their travel plans;
- Notification for offenders convicted outside the UK- An offender who has been convicted of a sex offence outside the UK and comes to stay in NI would be required to inform the police of where they are living and provide other personal details in the same way as convicted sex offenders from NI;
- Violent Offender Orders: This proposal allows the police to ask the court to make an order which places conditions on the behaviour of a violent offender in the community to manage the risk the person poses to the public. This is like the SOPO and the person would be subject to similar notification requirements as sex offenders.

The Department highlighted that there would unlikely be any major resource implications for the police as it is anticipated that applications as a result of the review mechanism would be

no more than 20 per year. The Department also suggested that no equality issues have been identified and an initial pre-policy equality screening has not identified any other section 75 impacts.<sup>26</sup> The Equality Screening Form acknowledged that the vast majority of sex offenders are men.<sup>27</sup> However the Department concluded that it would not conduct an Equality Impact Assessment as the policy only impacts on the perpetrators of sexual crimes and that there is no bearing on equality between certain groups.<sup>28</sup>

The Department published a summary of responses to the consultation. The following are some of the key issues raised.

### **Review Mechanism**

The PSNI supported the framework. A large majority of respondents supported the overall proposal but a number had concerns whether it was sufficiently rigorous. Some made specific proposals to tighten the procedure such as providing for no right of appeal. PBNI made a number of suggestions including an ability to reapply requirements should risk levels change and to include victim information in the assessment. NIACRO supported the decision to introduce a review system but felt that it minimally complied with the spirit of the judgment and that the review period should be based on the level of risk of the individual rather than an arbitrary period set out in legislation.<sup>29</sup>

The Department's response was that it would consider whether it would be beneficial to highlight additional criteria (victim information and convictions or findings made by a court in offences other than sexual offences) more explicitly in legislation.<sup>30</sup> The Department agreed to further consider the wording of the precise test in the light of comments received.<sup>31</sup> The Department explained that the reasons for having an appeal to a court were valid. The Department also responded to the point made regarding the reattachment of notification if the level of risk increased. The Department suggested that in these instances the police would apply for a SOPO.<sup>32</sup> In respect of the proposed time period, the Department believed that a period of 15 years from the date of leaving prison is a fair and appropriate period.<sup>33</sup>

### **Notification of all foreign travel**

The police accepted the Department's proposals under this headings but some other respondents wanted reassurance that the proposals would be as stringent as the rest of the UK in relation to travel outside the island of Ireland. However the Department reported that all acknowledged the difficulties of following this course for cross border travel. The Department responded that it would consider how stringent this provision would be without it becoming unworkable.<sup>34</sup>

### **Offenders with no fixed abode**

One respondent suggested that offenders with no fixed abode should be made to live in a hostel. In response, the Department highlighted that only offenders with conditions attached

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26 Department of Justice "Sex Offender Notification and Violent Offender Order: Proposals for Legislation, a Consultation Paper" July 2011, 45.

27 Department of Justice Equality Screening Form, Sex Offender Notification, 10

28 Department of Justice Equality Screening Form, Sex Offender Notification,19

29 Department of Justice "Sex Offender Notification and Violent Offender Order" Summary of representations made, October 2011,3

30 Department of Justice "Sex Offender Notification and Violent Offender Order" Summary of representations made, October 2011, 4.

31 Ibid.

32 Ibid,5

33 Ibid, 6

34 Department of Justice "Sex Offender Notification and Violent Offender Order" Summary of representations made, October 2011, 7.



to their release or a court order can be required to live at a particular location. The NSPCC commented that any procedure for weekly reporting should not interfere with the provision of detailed information. The Department responded that the details of how to manage weekly notification will be dealt with in guidance.<sup>35</sup>

### **Living in a household with a child**

The responses seem to broadly welcome this proposal except for one response which said that the requirement should be applied where risk demanded it. EXTERN and NSPCC made suggestions as to how the requirement could be strengthened. EXTERN suggested that any change in the number of under 18s in a household should be provided. NSPCC recommended that information should be provided to the police as soon as circumstances dictated. The Department indicated that it would continue with the proposal that is in line with the England and Wales proposals but would give consideration to the issues raised by EXTERN and NSPCC.<sup>36</sup>

### **Additional personal details/identification**

This proposal was broadly welcomed by respondents but respondents made further suggestions to enhance proposals. The police suggested there should be a requirement to provide mobile phone, internet provider and email addresses. EXTERN suggested an additional safeguard of spot checking against retained finger printed information. The Department responded that police already have powers under the SOA 2003 to check fingerprint data at periodic notification. Other respondents highlighted that there could be difficulties where an offender had multiple bank accounts or where someone had dual nationalities. The Department responded that it would proceed with its proposal but would consider the police suggestions for additional information to be added.<sup>37</sup>

### **Travel within the UK**

This proposal was welcomed by the police as it addressed a gap in current arrangements as an offender can use multiple addresses for up to six days anywhere in the UK without notifying the police. The Department said it would continue to explore this proposal.<sup>38</sup>

### **Offenders convicted outside the UK**

This proposal was welcomed by the police who highlighted that it would be beneficial for example where a sex offender from the Republic of Ireland would travel to NI. The Department indicated it would continue with this proposal which is not being dealt with in other UK jurisdictions as there are no other land borders.<sup>39</sup>

### **Sexual Offences Prevention Orders Provisions**

Respondents were broadly supportive of the proposal. The police said the provisions would strengthen risk management opportunities for example when a sex offender is no longer subject to licence conditions but is still exhibiting behaviour that needs to be addressed. Some respondents suggested that there may be resource issues and the Department responded that this will be further explored. The Northern Health and Social Care Trust commented that there may be issues with treatment programmes and the Department indicated that it would possibly deal with this in guidance but would explore this further.<sup>40</sup>

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35 Ibid, 7

36 Ibid, 8

37 Ibid, 9

38 Ibid, 9

39 Ibid, 9 &10

40 Ibid, 26& 27

### **Violent Offender Orders**

A number of issues were raised in relation to this proposal. The police highlighted that the sentence thresholds in England and Wales were too high. However, they could be a useful tool in managing serial domestic abusers who move from partner to partner. EXTERN suggested that the orders would enhance public protection arrangements and act as a preventative measure. EXTERN recommended that the criteria for orders should be offence based and not sentence based to prevent more serious offenders falling through the net. The Department responded that it intended to pursue the introduction of these orders in the Strategy Bill proposed for next year.<sup>41</sup>

In its briefing to the Justice Committee, the Department indicated that four of the consultation proposals would be included in the Criminal Justice Bill. These included: the review mechanism for indefinite periods of notification; ending notification for abolished sexual offences; notification of offenders convicted outside of the UK; and sexual offences prevention orders. The other proposals will be dealt with by affirmative secondary legislation or primary legislation through the planned Strategy Bill.<sup>42</sup>

### **Second Stage Debate**

During the second stage debate of the Bill, Mr Dickson MLA (Alliance) highlighted that concerns were raised in the Committee about the status of the police as first level decision makers and whether all cases should be dealt with by the courts. Mr Dickson argued that having a court process in all cases would undermine the Minister's efforts to speed up the justice system, would be time consuming and out of line with other UK jurisdictions.<sup>43</sup> Mr Maginness MLA (SDLP) indicated that the Minister was 'on the right lines' with the proposals on sex offender notification requirements and welcomed 'the Minister's initiative even though it may be repackaged from a previous occasion.'<sup>44</sup>

#### **3.1.1 Position in other UK jurisdictions**

##### **Scotland**

Scotland introduced remedial legislation in 2011 to remove the incompatibility of the Section 82 provisions of the SOA 2003 with the ECHR.<sup>45</sup> The legislation provides a mechanism for periodic review of the justification for the continuing the requirements in individual cases. An offender who is aged 18 years of age or over at the time of the crime and is subject to indefinite notification, the date of discharge will be 15 years from the date of conviction. In the cases of offenders under 18 years of age at the time the offence was committed, the discharge period is 8 years.<sup>46</sup> The relevant chief constable has to decide before the expiry of the 15 year or 8 year review period, whether a sex offender should continue to be subject to the notification requirements. If the sex offender should cease to be subject to the notification requirements, they will cease to be subject to the requirements from the date of discharge. If the relevant chief constable is satisfied that the offender should continue to be subject to notification requirements due to a risk of sexual harm, then a notification continuation order will be made specifying how long the offender has to notify before a period of review. The notification continuation order can be made for a fixed period of up to 15 years.<sup>47</sup> The decision of the relevant chief constable to impose a notification

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41 Ibid, 10

42 Department of Justice "Briefing to the Justice Committee on Sex Offender Notification: Final Policy Proposals" 11 November 2011.

43 Official Report of the Northern Ireland Assembly, Second Stage Debate of the Criminal Justice Bill, 3 July 2012

44 Ibid

45 Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011

46 Section 88B of the Sexual Offences Act 2003 as amended by Article 3 of the Sexual Offences Act 2003 (Remedial) (Scotland) Order 2011

47 Section 88C of the Sexual Offences Act 2003, as amended

continuation order can be appealed to a Sheriff. The decision of the Sheriff to grant or refuse an appeal can be appealed to the Sheriff Principal whose decision is final.<sup>48</sup> If a relevant chief constable has not reviewed a notification period by the required date, the offender can make an application to the Sheriff court to be no longer subject to the notification requirements. A Sheriff can impose a notification continuation order for a fixed period of no more than 15 years: the test will be that used by the relevant chief constable, whether the offender poses a risk of sexual harm.<sup>49</sup> An appeal of any decision must be brought within 21 days of the date of the decision.<sup>50</sup>

### England and Wales

A draft Order was been laid before Parliament in England and Wales on 6 March 2012 in order to remedy the declaration of incompatibility in relation to the SOA 2003.<sup>51</sup> The provisions insert new sections in the SOA to enable an offender to apply to the police for a review of the requirement that the relevant offender remains subject to the indefinite notification requirements which apply under section 82 of the SOA 2003.<sup>52</sup> Unlike the Scottish provisions, the offender is responsible for initiating the review. Section 91A makes provision for a relevant sex offender to apply to a relevant Chief of Police to make a determination that the qualifying relevant offender remains subject to notification requirements. Section 91B sets out the relevant qualifying time periods for review. The qualifying periods are after a period of 15 years from the date of initial notification and 8 years if the offender was under 18 on the relevant date. Section 91B also sets out the process that must be followed: the relevant chief police officer must within 14 days of receiving the application give the offender acknowledgement of receipt and may inform a responsible body that an application has been made. A responsible body includes the local probation board or provider of probation services, and a Minister exercising functions in relation to prisons and other bodies set out in section 325 of the Criminal Justice Act 2003, including youth offending teams, housing authorities and NHS Trusts. If the responsible body holds relevant information, this must be provided within 28 days of being notified of the application. The offender must satisfy the relevant chief police officer that it is not necessary for the purpose of protecting the public from sexual harm for the offender to remain subject to the notification requirements.<sup>53</sup> If the police decide that the offender should remain subject to the notification requirements, the notice of the determination must contain a statement of reasons and inform the offender that he may appeal the decision.<sup>54</sup> The draft Order makes provision for a further qualifying date for review if the police determine that notification requirements remain in place. The further qualifying date for review is the day after the 8 year period beginning with the day the police make a determination that the offender should continue to be subject to notification requirements but gives the police a power to require the police to be subject to notification requirements for a period no longer than 15 years.<sup>55</sup> The police can only exercise this power if the police determine that the risk is sufficient to justify the continuation of notification requirements after the end of the 8 year period.<sup>56</sup>

A previous draft remedial Order did not contain a provision for review by an independent and impartial tribunal which caused concern to the Joint Committee on Human Rights at Westminster.<sup>57</sup> The revised draft Order contains provision for an appeal to the magistrates'

48 Section 88G of the Sexual Offences Act 2003, as amended.

49 Section 88F of the Sexual Offences Act 2003, as amended.

50 Section 88G of the Sexual Offences Act 2003, as amended.

51 Draft Sexual Offences (Remedial) Order 2012

52 Draft 91A to 91G of the Sexual Offences Act 2003

53 Draft section 91C of the Sexual Offences Act 2003

54 Draft Section 91C of the Sexual Offences Act 2003

55 Draft Section 91B of the Sexual Offences Act 2003

56 See explanatory memorandum of the Sexual Offences Act 2003 (Remedial) Order 2012.

57 Draft Sexual Offences Act 2003 (Remedial) Order 2011

court within 21 days of the decision being made. If the magistrates' court makes a determination that the offender should cease to be subject to the indefinite notification requirement, this will cease on the date of the order.<sup>58</sup>

In its first report on the draft order, the Joint Committee on Human Rights (JCHR) highlighted concern that the Government's earlier proposal was insufficient to remedy the incompatibility due to a lack of provision for review by an independent and impartial tribunal.<sup>59</sup> The JCHR in its second report on the Draft Order concluded that the order was now sufficient to remedy the incompatibility with Article 8 that exists. The Committee stated:

"The draft order provides for a right of appeal to the magistrates' court from the determination by the police. Although this is not the same as a right of appeal to a higher court, as we preferred in our first Report, we accept that it is sufficient to remove the incompatibility identified by the Supreme Court in *F and Thompson*."<sup>60</sup>

The JCHR indicated however that there were a small number of areas where the Order could be improved.<sup>61</sup> The JCHR highlighted that there needed to be clarification that the right of appeal to the magistrates' courts extended to cases where the police made a determination to postpone the further review after the 8 year further qualifying date. The JCHR also suggested that it was not clear what powers the court has on such an appeal. The JCHR recommended that the Minister makes it clear that the courts have the power to quash a determination that the offender's next review be postponed beyond the eight year period and to substitute with a shorter period if appropriate.<sup>62</sup> An area considered was the duty to notify victims. The committee noted that the draft Order requires the police to take account of submissions or evidence of victims giving rise to indefinite notification requirements. However there was no requirement on the police to notify victims when an application for review of the notification requirements have has been met. Therefore victims may not know that an application has been made. The JCHR recommended that the Minister makes it clear that the chief officer of police should be expected to notify the victim that such an application has been made.<sup>63</sup> In relation to the provision that the police may notify responsible bodies when an application has been made, the JCHR was not clear why this was discretionary rather than a requirement. The JCHR recommended that the Minister make it clear that the expectation would be that the chief police officer would notify responsible bodies as a matter of course.<sup>64</sup> The Committee noted that the Order defines the risk of sexual harm to include psychological harm to the public which is a very broad definition. The Committee stated that it looked forward to clarification from the Minister on the meaning of psychological harm to the public.<sup>65</sup> In relation to the appeal mechanism in the draft Order, the JCHR noted that the right of appeal to the magistrates' court comes under its civil jurisdiction and therefore this will give rise to legal costs for the applicant. The Committee noted that this would give rise to questions regarding practical and effective access to court for those who do have sufficient means. The Committee called for clarification as to whether legal aid would be made available and whether costs would be recoverable from central funds if an appeal was successful.<sup>66</sup> Finally the JCHR noted that the order requires the Secretary of State to issue guidance to police as

58 Draft Section 91E of the Sexual Offences Act 2003 (try and find the original report)

59 Draft Sexual Offences Act 2003 (Remedial ) Order 2012-Second Report, Human Rights Joint Committee, 28 May 2012, Para 10, 14, available at <http://www.publications.parliament.uk/pa/jt201213/jtselect/jtrights/8/805.htm>

60 Draft Sexual Offences Act 2003 (Remedial ) Order 2012-Second Report, Human Rights Joint Committee, 28 May 2012, Para 15, available at <http://www.publications.parliament.uk/pa/jt201213/jtselect/jtrights/8/805.htm>

61 Draft Sexual Offences Act 2003 (Remedial ) Order 2012-Second Report, Human Rights Joint Committee, 28 May 2012, Para 18, available at <http://www.publications.parliament.uk/pa/jt201213/jtselect/jtrights/8/805.htm>

62 Ibid, at para 22

63 Ibid, at para22

64 Draft Sexual Offences Act 2003 (Remedial ) Order 2012-Second Report, Human Rights Joint Committee, 28 May 2012, Para 23

65 Ibid at para 24

66 Ibid at para 25

to how they should go about the determination of applications for review. However there is no requirement for consultation or for the guidance to be laid before Parliament. It was therefore recommended that guidance should be subject to consultation and parliamentary involvement commensurate with significance.<sup>67</sup>

In its briefing to the NI Assembly Justice Committee, the Department has indicated that it needs to consider issues as a result of the JCHR report.<sup>68</sup> Although the Department acknowledges the report does not apply to NI, it is important to consider its conclusions. It would appear the Department has taken into account the JCHR's preference for an appeal to the Crown Court.

## 3.2 Human Trafficking

The Department of Justice consulted in April 2012 on legislative proposals to amend the Sexual Offences Act 2003 (which deals with persons who are trafficked for sexual exploitation) and the Asylum and Immigration (Treatment of Claimants) Act 2004 (which deals with persons who are trafficked for the purpose of exploitation). In order to comply with Article 10 of the EU Directive, Northern Ireland has to create two new offences:

- To create an offence where D trafficks another person (V) within the UK who was not already trafficked into the UK (for example from London to Belfast)
- To create an offence when a UK national (D), or a person who is habitually resident in the UK trafficks V anywhere outside the UK (for example, if the UK national trafficked someone from Mexico to Brazil.)

Sections 109 and 110 of the Protection of Freedoms Act 2012 created the same two offences in order to comply with the EU Directive on Human Trafficking.<sup>69</sup> These sections apply only to England and Wales.

The Department received 49 responses on the legislative amendments and the respondents raised a number of broader issues.<sup>70</sup> The Legal Services Commission highlighted that they would wish to see a full Legal Aid Impact Assessment carried out. The Department responded that legal aid was considered prior to consultation and that there would be limited impact. The Public Prosecution Service suggested that the Department should consider extending the proposed offence for prosecution of a UK national who has trafficked someone outside the UK to allow the prosecution of a person who is resident in the UK but is not a UK national and has trafficked someone outside the UK. The Department responded that this is already covered by the proposal. QUB School of Law Organised Crime Project suggested that the Department should use the opportunity to amend other relevant legislation to strengthen the law on human trafficking and reduce demand. QUB's suggestions included increasing sentences in some areas, amendments to the Gangmasters' Licensing Act and protection from prosecution for victims. The Northern Ireland Evangelical Alliance (NIEA) also raised the issue of increased sentences taking the view that a fine of punishment for trafficking sentences is not appropriate. The NIEA suggested that the principle of prison for convicted traffickers would provide a consistent and firm policy framework. The QUB Ad Hoc Working Group on Human Trafficking recommended that the definition of a habitual resident should be set down in legislation. A number of respondents suggested that the Department was following the approach taken in England and Wales and was taking a minimalist approach in implementing the EU Directive. Some other suggestions were offered including:<sup>71</sup>

67 Ibid at para 26

68 DoJ Briefing to the Justice Committee, "Sex Offender Notification: Final Policy Proposals", 11 November 2011, para 6.

69 See Sections 109 and 110 of the Protection of Freedoms Act 2012, available at <http://www.legislation.gov.uk/ukpga/2012/9/section/110/enacted>

70 Department of Justice briefing paper to the Justice Committee, 12 June 2012.

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- addressing the lack of an adequate definition of trafficking;
- the treatment of victims in criminal proceedings, including protection from prosecution for victims
- the provision of a guardian or representative for trafficked children; and
- the creation of a national rapporteur;
- specifically including forced begging and exploitation of criminal activities as forms of exploitation.

The Department highlighted that it intended to compile the issues and refer them to the Organised Crime Task Force Immigration and Human Trafficking sub group.

In relation to equality issues, the Department has highlighted that, in its view, the proposals would have no adverse impact on groups specified under Section 75 of the Northern Ireland Act 1998. The Department indicated that the proposals could potentially increase the number of arrests and convictions of those involved in human trafficking, reducing the risk to victims. The Department concluded that an Equality Impact Assessment was not required.<sup>72</sup>

### Second Stage Debate

During the second stage debate of the Criminal Justice Bill, the Chairperson of the Justice Committee, Mr Givan (DUP) highlighted the concerns raised by consultees on the minimalist approach taken by the Department. Mr Givan stated

*“the Committee will no doubt wish to explore that during Committee Stage and I am sure that all Members will want to ensure that the legislation is technically compliant with the EU Directive.”<sup>73</sup>*

Similarly Lord Morrow, MLA (DUP) raised concerns about the minimalist approach taken in the Bill and asked a number of questions for the Minister to consider. Firstly he asked whether the Minister had considered extending the Asylum Act further to ensure forced begging and exploitation of criminal activities are included under the definition of exploitation to bring NI into line with the Directive. Secondly, Lord Morrow also asked the Minister whether the aggravating factors listed in Article 4 of the Directive would be taken into account in sentencing in trafficking offences. Thirdly, Lord Morrow raised the issue of special measures and highlighted that the Bill was an opportunity to ensure similar legal provisions for victims of labour and other forms of exploitation. Lord Morrow highlighted that the PPS intend to take into account the fact that a person has been trafficked if the person commits a crime for the purposes of exploitation. Lord Morrow stated that this was a policy statement of good intent and that this issue needs to be considered further to remove any doubt from the minds of the victim, and referred Members to Articles in the EU Directive on non- prosecution or non-application of penalties to the victim. Finally Lord Morrow called on the Minister to introduce legislation to ensure that prosecution of human trafficking is not dependent on reporting by the victim or that proceedings will continue if the victim withdraws their statement.<sup>74</sup>

Mr McIlveen, MLA (DUP) suggested in the debate that whilst the Bill will comply with the Directive, the current reporting mechanism is not independent of government and would like to have seen an independent national rapporteur who can report to the public created under the Bill.<sup>75</sup>

72 Department of Justice “Amendment to the Sexual Offences Act 2003 and Asylum and Immigration Act (Treatment of Claimants) Act 2004, see also DOJ Screening Form, Amendment of the Sexual Offences Act 2003 & the Asylum and Immigration (Treatment of Claimants Act etc) 2004, 20.

73 Official Report of the Northern Ireland Assembly, Second Stage Debate of the Criminal Justice Bill, 3 July 2012.

74 Ibid

75 Official Report of the Northern Ireland Assembly, Second Stage Debate of the Criminal Justice Bill, 3 July 2012

Mr McGlone MLA, (SDLP) highlighted in the debate that there were missed opportunities to comply with aspects of all parts of the Directive including areas such as penalties, investigations, prosecutions, assistance and support for victims and provisions for child victims.<sup>76</sup>

The Justice Minister responded to some of the issues raised during the second stage debate. In relation to the creation of a national rapporteur, he highlighted he was aware of the concerns around the current arrangements but that the Home Office are determined that the inter-ministerial group is appropriate to carry the national rapporteur arrangements. The Minister stated that he and the Department will work as best they could to strengthen arrangements, whether through this Bill, or through other actions or legislation. The Minister also referred to Lord Morrow's intention to introduce a Private Members Bill.<sup>77</sup> Lord Morrow has published a consultation paper on proposed changes in the law to tackle human trafficking. Lord Morrow proposes a Private Members Bill which would:<sup>78</sup>

- Allow courts to take aggravating factors into consideration when passing a sentence;
- Extend the definition of other exploitation to include forced begging;
- Bring in a new offence of paying for the sexual services of a prostitute;
- Ensure no prosecution is brought for a criminal offence committed by a trafficking victim as a consequence of being trafficked;
- Require training and investigative tools to be made available for police and prosecutors;
- Define a victim of trafficking;
- Set out what assistance and support is required for victims of trafficking;
- Set out what civil legal services should be made available to victims of trafficking;
- Require clear compensation procedures;
- Require each victim to have a legal advocate to support them through the criminal, immigration and compensation and ensure they receive suitable assistance;
- Provide special measures for trafficking victims if they act as witnesses;
- Require the Department of Justice to produce an annual strategy on raising awareness and reducing trafficking in victims.
- Lord Morrow argues that “without this legislation, there is no guarantee that resources will be put into reducing human trafficking and caring for victims over the long term.”<sup>79</sup>

### 3.3 DNA/ Fingerprint Retention

The Department consulted on policy proposals for the retention and destruction of fingerprints and DNA in Northern Ireland in June 2011. This was prompted by the need to amend the legislation to address the violation of the European Convention on Human Rights found in the case of *S & Marper v UK*. The key proposals were:<sup>80</sup>

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76 Ibid

77 Ibid

78 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, pgs 5-6 available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>

79 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, pg 6. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>

80 Department of Justice “Consultation on Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland”, March 2011, pg 8-9.

**Non-Convicted Persons**

- Immediate destruction of fingerprints and DNA profile from persons arrested for or charged, but not convicted of a minor offence;
- Immediate destruction of fingerprints and DNA profile for persons arrested for, but not charged, with a serious offence;
- Retention of fingerprints and DNA profile from persons charged but not convicted of a serious offence (e.g serious, violent or sexual) for a period of three years, with an extension of two years available on application to the courts.

**Convicted Adults**

- Indefinite retention of fingerprints and DNA profiles for all adults convicted of a recordable offence.

**Convicted under 18s**

- An exemption from indefinite retention for under 18s convicted of a minor offence on one occasion only;
- Retention of fingerprint and DNA profiles from under 18s on first conviction of a minor offence:
  - 5 years if the sentence is non- custodial;
  - 5 years plus length of sentence (if given a custodial sentence of less than 5 years)
  - Indefinite retention where a custodial sentence of five years or more is imposed;
- Indefinite retention of fingerprints and DNA profiles from under 18s convicted of a serious offence;
- Indefinite retention of fingerprints and DNA profiles from under 18s on a second conviction.

The Department proposed that all DNA samples taken from persons on arrest would be destroyed regardless of whether the person goes on to be convicted or not. DNA samples would only be retained for as long as needed in order to obtain a DNA profile and for no longer than six months. There would also be a requirement for the Chief Constable to destroy fingerprints and DNA in cases of unlawful arrest or mistaken identity. Fingerprints and DNA may be subject to a speculative search against the relevant databases before destruction. The Chief Constable would also be able to extend retention of any material obtained under PACE and terrorism legislation by periods of two years for the purposes of national security but this provision would be taken forward in the Protection of Freedoms Bill, as national security is an excepted matter (now the Protection of Freedoms Act 2012). The proposals would apply to new material and to fingerprints and DNA currently retained.<sup>81</sup> The consultation indicated that like England and Wales, Northern Ireland proposals were that fingerprints and DNA from non-convicted persons may only be retained in very limited circumstances, for example when a person is charged but not convicted of a serious, violent or sexual offence. In these cases the material may only be retained for three years with a possible extension of two years on application to court. Another proposal related to persons who are arrested for but not charged with serious, violent or sexual offences; for this category the fingerprints and DNA samples must be destroyed immediately unless one of more prescribed circumstance apply and retention is subject to authorisation. Prescribed circumstances could include where a young person or vulnerable adult is the victim of the alleged offence or the victim is not willing to come forward to give evidence.<sup>82</sup>

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81 Department of Justice "Consultation on Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland", March 2011 pg 9.

82 Ibid pg 11



The Department also proposed to consider whether the remit of the Biometric Commissioner appointed under the Protection of Freedoms Act 2012 should extend to Northern Ireland, or whether there should be separate appointment.<sup>83</sup>

In terms of photographs, the Department highlighted that the *S & Marper v UK* case did not involve an application for the destruction of photographs and had no plans to change the retention policy (a policy of indefinite retention). However the Department noted that there was a case before the UK Supreme Court (*GC and C v Commissioner of the Police of the Metropolis*) and would await with interest the judgment. This case involves whether the police retention of DNA, fingerprints and a photograph of GC and DNA fingerprints, DNA and information on the national computer of C violates Article 8 (the right to private and family life) of the ECHR.<sup>84</sup> It should be noted that since the consultation the Supreme Court has issued its judgment. The Supreme Court decided it should express no opinion on the issue of retention of photographs but to leave the point to be determined if and when it is raised properly in another case. The Supreme Court noted the judgment from the Divisional Court that ruled that the issue of retention of photographs was raised as ‘a passing reference in the claim form’.<sup>85</sup>

The Department indicated in the consultation document that, following a screening of the policy proposals, it was determined that no section 75 groups should be adversely impacted by the proposals and that they did not need to be subject to a full Equality Impact Assessment. The Department stated that it welcomed views on the implication of policy proposals on equality of opportunity of all groups specified under section 75 of the Northern Ireland Act 1998.<sup>86</sup>

### 3.4 Position in other jurisdictions

The Department of Justice indicated that the proposed framework for Northern Ireland is broadly similar to that legislated for in England and Wales, which is closely aligned to Scotland. It therefore may be useful to consider the legislative provisions in those jurisdictions.<sup>87</sup> A comparative table is available at Annex A of this paper.

#### **England and Wales**

The Protection of Freedoms Act 2012 amended the framework set out in the Police and Criminal Evidence Act (PACE) 1984 on the retention of DNA profiles and fingerprints in England and Wales.<sup>88</sup> The explanatory memorandum makes reference to the Programme for Government which states “the Government will adopt the protections of the Scottish Model for the DNA database.”<sup>89</sup> Section 1 of the 2012 Act inserts a new provision (section 63D) into PACE. New Section 63 D (2) of PACE requires the destruction of a fingerprint and DNA profile taken from a DNA sample, if they were taken unlawfully or if the arrest was unlawful or a case of mistaken identity. Furthermore, section 63 allows such material, which would be destroyed, to be retained for a short period until a speculative search of the databases is carried out. The new provisions allow for the police to retain material until the conclusion

83 Ibid, pg 12.

84 Department of Justice “Consultation on Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland”, March 2011, pg 9-10.

85 See Lord Dyson’s judgment in paragraphs 50, 51, *R on the Application of GC v Commissioner of the Police of the Metropolis* and *R on the Application of C v Commissioner of the Police of the Metropolis* [2011] UKSC 21

86 Department of Justice “Consultation on Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland”, March 2011, pg 13

87 Department of Justice “Consultation on Proposals for the Retention and Destruction of Fingerprints and DNA in Northern Ireland. March 2011, pg 11.

88 <http://www.legislation.gov.uk/ukpga/2012/9/section/1/enacted>

89 See explanatory memorandum of the Protection and Freedoms Act 2012, available at <http://www.legislation.gov.uk/ukpga/2012/9/notes/division/3/1/1>

of the investigation of an offence or the conclusion of legal proceedings instituted against that person.<sup>90</sup> Section 3 of the 2012 Act deals with persons who have been arrested for or charged with a qualifying offence and inserts a new section 63F into PACE 1984. Where a person has been arrested but not convicted of a qualifying offence but has previously been convicted of a recordable offence, their DNA and fingerprints may be retained indefinitely. However, this does not apply to excluded offences which are those offences which were committed when the person was under 18 years of age and a sentence of less than five years imprisonment or equivalent was imposed.<sup>91</sup> Where a person is charged but not convicted of a qualifying offence (i.e. a serious, violent or sexual offence) and has no previous convictions, their DNA and fingerprints may be retained for three years.<sup>92</sup> Where a person who has no previous convictions is arrested for a qualifying offence but is not subsequently charged or convicted, their DNA and fingerprints may be retained for three years if a successful application is made to the Independent Commissioner for the Retention and Use of Biometric Material.<sup>93</sup> The legislation also makes provision for the appointment of the Commissioner.<sup>94</sup> The standard three year retention period may be extended on a case by case basis with the approval of a district judge for a period of two years. The retention period cannot be extended for a period of more than five years in total. The police may appeal to the Crown Court against the refusal of a District Judge to grant such an order. Furthermore, the person from whom the material was taken may appeal to the Crown Court on the making of such an order.<sup>95</sup> The legislation makes provision for the procedure for the police to follow when making an application to the Independent Commission to retain material from a person with no previous convictions but who has been arrested for a qualifying offence, but is not subsequently charged or convicted. Applications may be made on the basis that the victim was under the age of 18, is a vulnerable adult or is associated with the person to whom the material relates. Applications may also be made where the retention of material is necessary to assist in the prevention or detection of crime.<sup>96</sup>

Section 4 of the Protection of Freedoms Act 2012 makes provisions relating to persons who have been arrested for or charged with a minor offence. This section inserts a new Section 63H into PACE. Where a person, who has previously been convicted of a recordable offence that is not an excludable offence, has subsequently been arrested for or charged with a minor offence and is not subsequently convicted, their fingerprints or DNA profiles may be retained indefinitely. An excluded offence in this section is the same as an excluded offence under section 3, i.e. an offence committed where the person was under 18 and the sentence of less than five years imprisonment was imposed.

Section 5 of the Protection of Freedoms Act 2012 makes provision relating to retention period where a person has been convicted of a recordable offence. Where an adult has been convicted of a recordable offence, their DNA profiles and fingerprints may be retained indefinitely.<sup>97</sup> Section 7 of the Protection of Freedoms Act 2012 inserts a new section 63K into PACE which makes provision in relation to persons under 18 years of age convicted of a first minor offence. Where a custodial sentence of five years or more is imposed, the person's fingerprints and DNA profile may be retained indefinitely.<sup>98</sup> Where a custodial sentence of less than five years is imposed, the person's DNA and fingerprints may be retained for the duration of the sentence which includes the time spent in custody and period

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90 Section 63E of the Police and Criminal Evidence Act (PACE) 1984 as amended by section 2 of the Protection of Freedoms Act 2012.

91 Section 63 (1) and(2)

92 Section 63F (3),(4) and (6).

93 Section 63G

94 Section 63F (5)

95 Section 63F(7) (8) (9) and (10)

96 Section 63G

97 Section 63I Pace 1984 as amended by section 5 of the Protection of Freedoms Act 2012

98 Section 63K(3)

of sentence served in the community plus a further five years.<sup>99</sup> Where a person is given a non-custodial sentence on conviction of his or her offence, their DNA profile and fingerprints may be retained for five years from the date the material was taken.<sup>100</sup>

### Scotland

The ECtHR judgment made specific reference to the Scottish model for DNA and fingerprint retention. This system allows for the retention of fingerprints and DNA fingerprints or persons who have been charged but not convicted of serious crime for a period of three years plus possible two year extension(s) by a court.<sup>101</sup> The system also allows for indefinite retention in cases where an offence has resulted in conviction, in both adults and under 18s. Retention is not permissible under the Scottish system where a person has been arrested but not charged or convicted of a serious crime or in non-conviction in minor crimes. The Department of Justice highlighted that there are aspects of the proposed framework for Northern Ireland which goes further than the Scottish System in liberalising the regime and conversely there are aspects which are stronger.<sup>102</sup> In Northern Ireland, the Department propose to provide for a single two year extension for the retention of DNA and fingerprints of those charged but not convicted of a qualifying offence. In Scotland, the system allows for extensions on a rolling basis.<sup>103</sup> The Northern Ireland proposals allow for the indefinite retention of material from those charged but not convicted of a minor offence if the person has a previous conviction for a recordable offence (unless the conviction was for a single minor under 18 offence). Officials pointed out to the Committee that in the Scottish system, such material is destroyed regardless of previous convictions.<sup>104</sup> The Officials also highlighted that the Northern Ireland proposals differ from the Scottish system in that they differentiate between those who are convicted and those who are not, between minor and serious offences and between adults and juveniles.<sup>105</sup>

### Republic of Ireland

The issue of DNA retention policy was the subject of legislative proposals in the Republic of Ireland. Section 77 of the Criminal Justice (Forensic Evidence and DNA Database system) Bill 2011 applied default destruction periods of three years to bodily samples. This section applies to persons who have been acquitted of an offence or where proceedings are discontinued. Section 78 applied default removal periods of 10 years relating to adults and 5 years for children of DNA profiles entered into the system.<sup>106</sup> This section also applies to persons who have been acquitted of an offence or where proceedings are discontinued. The Bill did not complete the legislative process before dissolution of the Oireachtas of 1st February 2011.<sup>107</sup>

### Responses to the Department of Justice Consultation

The Justice Committee was briefed on the outcome of the consultation on the legislative proposals in June 2011. The Department indicated that the proposals outlined in the

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99 Section 63K(2)  
 100 Section 63K(4)  
 101 For ease of reference, a summary of information on the Scottish System can be found in a comparative table in Annex B of the Explanatory Memorandum of the Protection of Freedoms Act 2012, available at [http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpgaen\\_20120009\\_en.pdf](http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpgaen_20120009_en.pdf)  
 102 Committee for Justice "Official Report on Final Legislative Proposals for the Retention and Destruction of DNA and Fingerprints in Northern Ireland" 8 September 2011  
 103 Committee for Justice "Official Report on Final Legislative Proposals for the Retention and Destruction of DNA and Fingerprints in Northern Ireland" 8 September 2011  
 104 Committee for Justice "Official Report on Final Legislative Proposals for the Retention and Destruction of DNA and Fingerprints in Northern Ireland" 8 September 2011  
 105 Ibid  
 106 <http://www.oireachtas.ie/documents/bills28/bills/2010/0210/b0210d.pdf>  
 107 <http://www.oireachtas.ie/viewdoc.asp?DocID=13886&&CatID=59>

consultation were viewed favourably by respondents as an improvement on the current indefinite retention policy.<sup>108</sup> However, a number of key points were raised by respondents.<sup>109</sup> On a general note, the Northern Ireland Human Rights Commission expressed concern that no interim measures have been put in place to give effect to the judgment prior to the introduction of the legislation. The PSNI indicated that they did not support the proposal that material be retained only in cases where persons were charged but not convicted of serious offences unless prescribed circumstances apply. The PSNI suggested that the appropriate threshold for retention is the arrest for a serious offence. The Law Centre for Northern Ireland also called for clarity as to whether 5 years is the maximum permissible for the retention of biometric material for persons charged but not convicted of a serious offence.

A number of concerns were raised by respondents in relation to proposals relating to juveniles. The Northern Ireland Commissioner for Children and Young People (NICCY) welcomed the proposal of immediate destruction of material from persons not convicted of a minor offence or arrested and not charged with a serious offence. However, NICCY highlighted opposition to the retention of material from under 18s convicted of a minor crime. NICCY argued that material from under 18s convicted of a serious minor offence should not be retained indefinitely and suggested that material should be destroyed on reaching the age of 18. In the same vein, the Committee on Administration of Justice (CAJ) argued that the proposals in respect of convicted children do not go far enough and that destruction should take place at the age of 18 or at the end of sentence, whichever comes first. CAJ suggested that the proposals on children do not fully engage with the UK's obligations under the United Nations Convention on the Rights of the Child (UNCRC). British Irish Rights Watch (BIRW) suggested that there should be a presumption that material obtained from children should be removed from the database unless compelling reasons exist to retain it. BIRW stated that it would be wrong that a child cautioned on two occasions for shoplifting would have material retained indefinitely. The Children's Law Centre (CLC) expressed grave concerns about the taking, collation and retention of DNA from children and young people as young as 10 to 18 and recommend it should be ceased immediately. The CLC stated it was firmly opposed to proposals to retain the material of under 18s not convicted of an offence, which CLC argued is in breach of Article 40 of the UNCRC (the right to be presumed innocent until proven guilty).

There was some difference of opinion as to whether oversight arrangements should be local or UK wide. NICCY indicated it would welcome the appointment of an Independent Commissioner to oversee all aspects of the retention framework. The CAJ advocates a separate Commissioner to ensure a local level of accountability. However, the PSNI advocates one Biometric Commissioner covering the whole of the UK. Genewatch stated it was a matter for NI if it wanted to have its own Biometric Commissioner.

Officials from the Department of Justice in a briefing to the Justice Committee on 8 September 2011 responded to some of the concerns raised in the consultation.<sup>110</sup> In response to the PSNI concerns that the threshold on charge is too high and should be on arrest, the Department indicated that the Minister has considered these concerns and is minded to keep the threshold at charge to keep Northern Ireland in sync with other UK jurisdictions. However, the Minister has agreed to look at the widening range of circumstances in which the threshold may be set aside.<sup>111</sup> The Department indicated that some of the prescribed circumstances that might apply include: offences under the Sexual Offences Act 2003 and the Sexual Offences (Northern Ireland) Order 2008, and violent offences such as domestic assaults or assaults on children. The Department intend that the

108 Department of Justice Briefing Paper on DNA/Fingerprints Retention Policy in Northern Ireland, 23 June 2011

109 The summary of comments can be found in Annex C of the Department of Justice Briefing Paper on DNA/Fingerprints Retention Policy in Northern Ireland, 23 June 2011

110 Committee for Justice Official Report "Final Legislative Proposals for the Retention and Destruction of DNA and Fingerprints in Northern Ireland" 8 September 2011.

111 Ibid.pg 4.

Bill will contain an Order making power to set out the prescribed range of circumstances in subordinate legislation.<sup>112</sup>

The Committee were informed that the Minister had also given consideration to the current practice of indefinitely retaining photographs. The Department concluded however that photographs would not form part of the proposed framework unless there was an authoritative judicial ruling on the issue in order to maintain parity with England and Wales.<sup>113</sup>

The Committee were also briefed that the Minister had considered the proposed retention regime for the conviction of under 18s which differs from the Scottish system in the treatment of those convicted of a single minor offence. The Minister concluded that the framework should maintain the distinction which responds to the spirit of the ECHR judgment which criticises a system which takes no account of age.<sup>114</sup>

Officials also discussed the proposal to allow for a single two year extension for the retention of DNA or fingerprints of those charged but not convicted of a qualifying offence. Officials were advised by officials in the Scottish government that since the provisions were introduced in Scotland, no extensions had been applied for. Whilst this could indicate that a mechanism for extensions is not required, the Department concluded that it would still proceed with this proposal as there may be unforeseen circumstances in which it may be necessary to retain material for a further two years.<sup>115</sup>

Concerns were raised in relation to equality and human rights issues in response to the Department's proposals.<sup>116</sup> CAJ highlighted that there was a lack of equality monitoring system in the proposals. The Children's Law Centre was critical of the Department's screening exercise and argued that there was a need for a full, thorough and comprehensive screening exercise and equality impact assessment, including direct consultation with children and young people. The Department in its briefing paper to the Justice Committee in June 2011 indicated that constituent parts of the policy have been screened out as not having any adverse impact on section 75 groups in the Northern Ireland Act 1998.<sup>117</sup> The screening exercise conducted by the Department concluded that an Equality Impact Assessment is not required on this basis. The screening form highlighted that the policy includes limited mitigation in favour of children and young people whose first conviction was a minor offence by replacing indefinite retention with a time bound period depending on whether a custodial sentence was imposed.<sup>118</sup> The Department stated that the proposals were convention compliant.<sup>119</sup>

### **Second Stage Debate**

The Deputy Chairperson of the Justice Committee, Mr McCartney MLA (Sinn Féin), highlighted some of the issues that needed to be addressed at Committee Stage during the Bill's second stage debate.<sup>120</sup> These included fingerprint and DNA retention and a disproportionate build-

112 Committee for Justice Official Report "Final Legislative Proposals for the Retention and Destruction of DNA and Fingerprints in Northern Ireland" 8 September 2011.pg 4

113 Ibid.pg 4

114 Ibid.pg 4

115 Ibid, pg 5.

116 See Annex C of the Department of Justice Briefing Paper to the Justice Committee on DNA and Fingerprint Retention Policy in Northern Ireland, 23 June 2012.

117 Annex C of the Department of Justice Briefing Paper to the Justice Committee on DNA and Fingerprint Retention Policy in Northern Ireland, 23 June 2011.

118 DoJ Equality Screening Form, Proposals for the Retention and Destruction of Fingerprints and DNA IN Northern Ireland, 16, 20

119 See Annex C of the Department of Justice Briefing Paper to the Justice Committee on DNA and Fingerprint Retention Policy in Northern Ireland, 23 June 2011.para 13. See also briefing paper from the Department of Justice to the Justice Committee on DNA/ Fingerprints retention policy dated 1 September 2011, para 12.

120 Official Report of the Northern Ireland Assembly, Second Stage Debate of the Criminal Justice Bill, 3 July 2012.

up of the database. Mr McCartney argued that pro rata the database is 10 times bigger than the United States and 10 times bigger than the European average. The Deputy Chairperson also indicated that the presumption of innocence was being undermined and there is a divergence from the ECHR. He highlighted that it is estimated that perhaps one in five people whose profile is on the database is not convicted and that profiles are being kept because a person might in the future commit an offence. Mr McGlone MLA, (SDLP) argued that the Bill does not treat someone as innocent if, at the conclusion of an investigation, charges are not initiated.<sup>121</sup>

Mr McCartney also raised the issue of the retention of photographs and argued that there was an opportunity in the Bill to ensure that there were not 'unnecessary' legal challenges. The final issue raised by Mr McCartney related to the introduction of the Biometric Commissioner and he suggested that the courts should be the third party arbiter in the retention of DNA and fingerprints.<sup>122</sup> Mr Hussey MLA, (Ulster Unionist Party) highlighted the issue of remuneration and indicated that further details of what the Minister has planned for the Commissioner would be welcome.<sup>123</sup> Mr Dickson MLA (Alliance) addressed the issue of retention of DNA of minors arguing that the legislation correctly made provision for ensuring that the DNA of first time offenders is not indefinitely retained. However, he thought the legislation rightly makes provision for indefinite retention following conviction of a serious offence or second conviction, striking an important balance.<sup>124</sup>

The Justice Minister responded to some of the issues raised in relation to DNA and fingerprint retention during the second stage debate. In relation to the issue of the erosion of the principle the presumption of innocence, the Minister referred to research which indicated that those arrested but not convicted of an offence have a significantly higher risk of being convicted of a future offence than individuals not previously arrested. Furthermore, the risk does not become the same as the general population until a period of three to four and three quarter years has elapsed. It is on this basis that the Department proposed the retention period of three years with a possible extension of two years for individuals arrested but not convicted of serious, violent or sexual offences.<sup>125</sup>

## 4 Content of the Bill

This section of the paper provides an overview of the contents of the criminal Justice Bill. It is divided as follows:

- Provisions of the Bill relating to sex offenders
- Provisions of the Bill relating to trafficking people for exploitation
- Provisions of the Bill relating to retention of fingerprints, DNA profiles etc
- Supplementary provisions of the Bill
- Schedules of the Bill

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121 Ibid

122 Official Report of the Northern Ireland Assembly, Second Stage Debate of the Criminal Justice Bill, 3 July 2012.

123 Ibid.

124 Ibid

125 Ibid

## 4.1 Provisions Relating to Sex Offenders

### **Clause 1: Review of indefinite notification requirements**

Clause 1(1) specifies that the following subsections amend Part 2 of the Sexual Offences Act 2003

Clause 1(2) inserts a new schedule 3A into Part 2 of the Sexual Offences Act 2003 which provides for the review and discharge of indefinite notification requirements

Clause 1 (3) specifies that after Schedule 3, insert the Schedule set out in Schedule 1 of the Criminal Justice Bill. This schedule sets the review and discharge of indefinite notification requirements.

### **Commentary**

The Sexual Offences Act 2003 places requirements on relevant sex offenders to notify the police of certain details and specifies notification periods. For the most serious offenders with custodial sentences of 30 months or more, there is an indefinite notification period and currently there is no right of review. The Schedule inserted into the 2003 Act by Clause 1 addresses this issue and provides for a review and discharge of notification requirements in order to comply with the UK Supreme Court judgement of incompatibility with Article 8 of the ECHR.

### **Clause 2: Ending notification requirements for acts which are no longer offences**

Clause 2 (1) specifies that the following subsections amend part 2 of the Sexual Offences Act 2003

Clause 2 (2) amends section 93 of the Sexual Offences Act 2003 by substituting the heading “Acts which are no longer offences”

Clause 2 (3) amends section 93 of the Sexual Offences Act 2003 by substituting “acts which are no longer offences” in the place of abolished homosexual offences

Clause 2 (4) substitutes the heading and paragraph 1 of Schedule 4 of the 2003 Act (Procedures for ending notification requirements for abolished homosexual offences) for “Procedure for Ending Notification Requirements for Acts Which Are No Longer Offences”.

### **Commentary**

Clause 2 of the Criminal Justice Bill makes consequential amendments to section 93 and Schedule 4 of the Sexual Offences Act 2003 to amend the scope of the procedure for ending notification for abolished homosexual offences. Section 93 and schedule 4 of the 2003 Act sets out the procedure for certain offenders to have their notification requirements discharged in respect of offences which have been abolished since the initial notification was attached. However, these clauses in the 2003 Act only apply to homosexual offences. The law on the age of consent changed from age 17 to 16 as a result of the Sexual Offences (Northern Ireland) Order 2008 and therefore the procedure for ending notifications requirements to include offences involving consensual offences where the other party had been 16 instead of 17 and where the offender was convicted or sentenced on the basis where they had an honest belief the other party was 16.

### **Clause 3: Offences committed in an EEA State other than the United Kingdom**

Clause 3 (1) specifies that the following subsections amend Part 2 of the Sexual Offences Act 2003.

Clause 3 (2) inserts a new section 96A into the 2003 Act in relation to Offences Committed in an EEA State other than the United Kingdom

#### **Commentary**

Clause 3 requires offenders convicted of a relevant offence from EEA State outside the United Kingdom who come to Northern Ireland to notify the police. A relevant offence is set out in Schedule 3 of the 2003 Act. The offender must notify the police and provide them with certain information after three days once they have stayed in Northern Ireland for a qualifying period. The qualifying period is seven days (or two or more periods in any period of 12 months which taken together amount to seven days) that the person is in Northern Ireland.

### **Clause 4: Sex Offender Prevention Orders**

Clause 4(1) specifies that the following subsections amend Part 2 of the Sexual Offences Act 2003

Clause 4(2) (a) inserts “requires the defendant to anything in the order (or both)” after “order” in subsection 1(a) in section 107 of the Sexual Offences Act 2003 (effect of sexual offences prevention orders). Clause 4 (2) (b) amends subsection 2 of the Section 107 of the Sexual Offences Act 2003 by inserting “requirements” after “prohibitions.”

Clause 4(3) amends section 108 (5) of the 2003 Order by inserting “or requirements” after “prohibitions”

Clause 4 (4) amends section 109 (interim orders) in the 2003 by inserting “or requiring the defendant to anything described in the order (or both)” at the end of subsection 3.

Clause 4 (5) amends section 113 (Offences) in the 2003 Order by inserting a new subsection 1A which states “A person commits an offence if without reasonable excuse he fails to do anything which he is required to do by a sexual offences prevention order or an interim sexual offences prevention order”.

#### **Commentary**

The effect of Clause 4 is to amend Part 2 of the 2003 Act so that an offender subject to a sexual offences prevention order can be required to undertake a specified action in order to protect the public as well as prohibiting the offender from doing something described in the Order. Currently the orders can only enable the court to prohibit a person from doing anything described in a sexual offences prevention order. The clause also specifies that it is an offence to fail to undertake a particular action described in the order.



## 4.2 Provisions relating to human trafficking

### Clause 5: Trafficking people for exploitation

Clause 5 (1) inserts a new section 58A after section 58 in the Sexual Offences Act 2003 on “Trafficking outside the UK for sexual exploitation. The new Section 58A (1) states that a person commits an offence if they intentionally arrange or facilitate the arrival in or entry into a country other than the United Kingdom of another person. The section also makes it an offence for a person to intentionally arrange or facilitate the departure of another person from a country other than the United Kingdom or the travel of another person within a country other than the United Kingdom. New section 58A(2) applies to a British citizen, a British national, a British overseas territories citizen by virtue of a connection with Gibraltar, a person who was habitually resident in Northern Ireland at the time of the offence or a body incorporated under the law of any part of the United Kingdom. The new section 58A (3) sets out the penalties. A person guilty of an offence is liable: on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both; on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Clause 5 (2) omits paragraph (c) from section 60 (1) (relevant offence) of the Sexual Offences Act 2003. Section 60 (1) (c) sets out that a relevant offence is an offence listed in schedule 1 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

Clause 5 (3) (a) amends Schedule 1, paragraph 28 of the Criminal Justice (Northern Ireland) Order 2008 by inserting “section 58A (trafficking outside the UK for sexual exploitation), or” after the entry relating to section 58. Clause 5(3) (b) amends Part 2 of Schedule 2, paragraph 13 (sentencing of dangerous offenders: specified sexual offences) by inserting references to section 58A (trafficking outside the UK for the purposes of sexual exploitation) after the entry relating to section 58.

### Commentary

Clause 5 inserts a new Section 58A into the Sexual Offences Act 2003, dealing with trafficking people for sexual exploitation. A person will commit an offence if they intentionally arrange or facilitate the entry of a person into, within or departure from countries outside the UK for the purpose of sexual exploitation. The offence may be committed by British Citizens, persons habitually resident in Northern Ireland or bodies incorporated under the law of any part of the United Kingdom. The section also sets out penalties in relation to the offence: on summary conviction, a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum. The new section 58A sets out the penalty for conviction on indictment- a term of imprisonment not exceeding 14 years.

It should be noted that the relevant provisions of the Protection of Freedoms Act 2012 which apply to England and Wales take a slightly different approach to the amendment of sections 57-59 of the Sexual Offences Act 2003. Rather than add a new section, as the Criminal Justice Bill will, the Protection of Freedoms Act replaces sections 57-59 with a new consolidated section 59A. The new section 59A (6) (a) inserted by the PFA also provides that the maximum period of imprisonment following a summary conviction should be 12 months rather than 6 months. However 59A (7) provides that in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (6) (a) to 12 months is to be read as a reference to six months. Currently, s 154(1) of the Criminal Justice Act 2003 has not commenced. When asked for clarification as to whether penalties in NI could differ from England and Wales should the provisions of the Criminal Justice Act 2003 come into force, the Department explained:<sup>126</sup>

*“There is a general criminal law procedure difference between NI and E&W. When dealing with summary offences a NI District Judge has power under the Magistrates’ Courts (Northern Ireland) Order 1981 (“the 1981 Order”) to impose a fine up to the maximum of the statutory scale of £5,000 or six months in prison or both. The 1981 Order does provide that where an indictable offence can be heard in the magistrates’ court and the sentence exceeds six months, the Defendant may opt for trial in the higher Crown Court and, where s/he, does not so opt, the District Judge in this situation can impose a sentence of imprisonment up to 12 months. The basic summary procedure imprisonment period is six months. Section 154 of the Criminal Justice Act 2003 made provision for E & W to increase the general limit on magistrates’ court’s powers to impose imprisonment in respect of any one offence (comparable to our six months powers) from six to twelve months.”*

### **Clause 6: Trafficking people for other exploitation**

Clause 6 (1) provides that the following subsections amend section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Section 4 of the 2004 Act deals with Trafficking People for Exploitation.

Clause 6 (2) amends section 4, subsection 2 of the 2004 Act by omitting the words “in respect of whom he believes that an offence may have been committed.

Clause 6 (3) inserts a new section 3A into after subsection 3 of section 4 of the 2004 Act. New section 3A (a) (i)-(iii) of the 2004 Act provides that a person commits an offence if the person arranges or facilitates: the arrival in or entry into, travel within a country or departure of the passenger from a country other than the United Kingdom. New Section 3A(b) (i) and(ii) provides that a person commits an offence if that person intends to exploit the passenger or believes that another person is likely to exploit the passenger, wherever the exploitation is to occur.

Clause 6 (4) amends subsection 4 of Section 4 of the 2004 by substituting paragraph (b). The new paragraph (b) provides that a person for the purposes of subsection 4 is exploited if (and only if) he is encouraged, required or expected to anything that as a result of which he or another person would commit an offence under the Human Tissue Act 2004 as it extends to Northern Ireland.

Clause 6(5) inserts new subsections 4A and 4B into Section 4 the 2004 Act. Section 4A provides that subsections (1) to (3A) apply to anything done whether inside or outside the United Kingdom. New subsection 4B provides that subsection 3A applies to a British citizen, a British National, a person who is a British overseas territory citizen by virtue of a connection with Gibraltar, a person who was at the time of the offence habitually resident in NI and a body incorporated under the law of a part of the United Kingdom.

### **Commentary**

Clause 6 of the Bill amends Section 4 of the Asylum and Immigration (Treatment of Claimants) Act 2004, dealing with trafficking people for other exploitation. Clause 6(2) omits the requirement that an alleged offender had to believe that an offence under section 4(1) may have been committed. Clause 6(3) inserts a new sub-section 3A into section 4 of the 2004 Act. The clause is similar to the clause 5 of the Bill in that it makes it an offence to traffic someone anywhere outside the United Kingdom. The clause applies again to British citizens, persons who are habitually resident in NI and bodies incorporated under law in a part of the United Kingdom. Clause 6 also makes reference to the Human Tissue Act 2004 in relation to the meaning of exploitation. Unlike the previous clause, there are no explicit references to penalties in clause 6. However the Explanatory and Financial Memorandum (EFM) corresponding to the Bill indicates the same penalties as those set out in Clause 5,

i.e. on summary conviction, a term of imprisonment of six months or a fine not exceeding the statutory maximum and on conviction on indictment, a term of imprisonment not exceeding 14 years.

It should be noted that penalties are set out explicitly in section 4 (5) of the Asylum and Immigration Act 2004. Section 4 (5) states that a person guilty of an offence is liable on conviction on indictment, to a term of imprisonment not exceeding 14 years, to a fine or both; and on summary conviction to a term of imprisonment not exceeding 12 months, to a fine not exceeding the statutory maximum or both. Section 5(11) of the Asylum and Immigration Act 2004 provides that in relation to England and Wales, the reference to 12 months should be read as six months until the commencement of section 154 of the Criminal Justice Act 2003. Section 4(5) also has to be read in conjunction with section 5(13) which provides that in relation to Northern Ireland the reference to twelve months should be read as if it were a reference to six months.<sup>127</sup>

### 4.3 Provisions of the Bill relating to retention of fingerprints, DNA profiles etc

#### **Clause 7: Retention of fingerprints, DNA profiles etc.**

Clause 7 (1) of the Bill inserts the Articles set out in schedule 2 after Article 63A of the Police and Criminal Evidence (Northern Ireland) Order 1989.

Clause 7 (2) provides that the statutory provisions set out in the Bill have effect subject to minor and consequential amendments specified in the schedule.

Clause 7 (3) requires the Department of Justice to make an order setting out the transitional, transitory or saving provisions in connections with the coming into operation of this section.

Clause 7(4) requires Department to provide for the destruction or retention of PACE material or in the case of DNA profile taken from a sample before the commencement day in connection with the investigation of an offence

Clause 7(5) provides that an order made under subsection (3) is subject to negative resolution

Clause 7(6) contains some definitions. "Commencement day" means the day on which this section comes into operation. PACE material means material that would have been material to which Article 63B or 63M of the Police and Criminal Evidence (Northern Ireland) Order 1989 applied of those provisions had been in operation when it was taken or derived.

#### **Commentary**

Clause 7 inserts new Articles set out in Schedule 2 and 3 of the Bill after article 63A of the Police and Criminal Evidence (Northern Ireland) Order 1989. The Articles in these Schedules replace the existing framework governing the retention and destruction of fingerprints and DNA profiles in order to comply with the ECHR ruling in *S & Marper v UK*. Clause 7 requires the Department to make an order setting out transitional or savings provisions involved in the commencement of this section. The order is subject to negative resolution. This clause also requires the Department to provide for the destruction or retention of DNA profiles and fingerprints taken before the commencement of the legislation. The EFM indicated that this

will enable the Department to ensure that the retention and destruction regime applies to existing material but recognises that this exercise will take time to complete.<sup>128</sup>

## 4.4 Supplementary Provisions

### Clause 8: Repeals

Clause 8 provides that the statutory provisions in schedule 4 of the Bill are repealed to the extent as set out in the second column of the schedule.

### Clause 9: Commencement and transitional, etc provisions

Clause 9 (1) specifies that section 9 and sections 2 and 10 come into operation on the day after Royal Assent.

Clause 9 (2) provides that the other provisions in the Act may come into force on such day or days as the Department of Justice may by order appoint.

Clause 9 (3) provides that an order made under subsection 2 may contain transitional or savings provisions as the Department considers appropriate.

Clause 9 (4) provides that subsection 3 does not apply to an order bringing section 7 or the repeals in Part 2 of Schedule 4 into operation.

### Clause 10: Short Title

Clause 10 states that the Act may be cited as the Criminal Justice Act (Northern Ireland) 2012

## 4.5 Schedules of the Bill

### Schedule 1: Schedule 3A to the Sexual Offences Act 2003, as Inserted

This schedule has been inserted by Clause 1 of this Bill and provides detail on the review of indefinite notification requirements. The EFM sets out a number of relevant definitions for the purposes of this Schedule. A qualifying offence is an offence set out in Article 52A of PACE which covers serious violent, sexual or terrorist offences. A recordable offence is one punishable by imprisonment or otherwise set out in Regulation 2 of the Northern Ireland Criminal Records (Recordable Offences) Regulations 189.<sup>129</sup>

Paragraph 1(1) provides that the schedule applies to a person who on or after the commencement of section 1 of the Criminal Justice Act (Northern Ireland) 2012 comes into operation is subject to indefinite notification requirements for an indefinite period. Paragraph 1 (2) states that the person to whom the schedule applies is referred to as an

128 Explanatory and Financial Memorandum of the Criminal Justice as introduced in the Northern Ireland Assembly on 25 June 2012, para 57.

129 Explanatory Memorandum on the Criminal Justice Bill introduced in the Northern Ireland Assembly on 25 June 2012, para 69.

offender. Paragraph 1(3) sets out definitions used in the schedule such as risk of sexual harm, notifications requirements and the meaning of a relevant event.

Paragraph 2 makes provision for the process involved in initial review applications. Paragraph 2 (1) enables an offender at any time after the end of the initial review period to apply to the Chief Constable to discharge the offender from notification requirements. However the subparagraph does not apply if an offender is also subject to a sexual offences prevention order or an interim sexual offences prevention order or the offender is subject to notification requirements for a fixed period which has not expired.<sup>130</sup> The initial review period is 15 years beginning with the date of initial notification in the case of adult offenders and 8 years in the case of an offender under the age of 18.<sup>131</sup> In the case where an offender is subject to notification requirements for an indefinite period as a result of two or more relevant events, the calculation is to be made with reference to the latest of the events.<sup>132</sup> Paragraph 2 provides that any period during which the offender is in prison or detained in hospital is disregarded.<sup>133</sup> The offender has to make the application in writing and must include a number of details including their name, address, date of birth, the date of the relevant event and information the offender wishes to be taken into account by the Chief Constable.<sup>134</sup> The Chief Constable must acknowledge receipt of the application within 14 days.<sup>135</sup> The Chief Constable may request information from any body or person that he considers appropriate.<sup>136</sup>

Paragraph 3 (1) of the Schedule relates to determination of the application and sets out the test that the Chief Constable shall use in making determinations. The Chief Constable shall discharge the notification requirements unless satisfied that the offender poses a risk of sexual and the risk is such as to justify the notification requirements continuing in the interests of the prevention or investigation of crime or public protection. In making a decision as to whether to continue notification requirements, the Chief Constable must take into account a number of matters including:<sup>137</sup>

seriousness of the offence;

- the period of time that has elapsed since the offender committed the offence;
- whether the offender committed any offence under section 3 of the Sex Offenders Act 1997 or under section 91 of the Sexual Offences Act 2003;<sup>138</sup>
- the age of the offender at the time of the decision and the offence;
- the age of the victim;
- the difference in age between offender and victim;
- any convictions or finding by a court in the UK or a country outside the UK;
- whether criminal proceedings for any offences listed in schedule 3 have been instituted against the offender but have not concluded

130 Schedule 1, paragraph 2(2) of the Criminal Justice Bill

131 Schedule 1, paragraph 2(3)

132 Schedule 1, paragraph 2(4) (a)

133 Schedule 1, paragraph 2(4) (b)

134 Schedule 1, paragraph 2(6)

135 Schedule 1, paragraph 2(7)

136 Schedule 1, paragraph 2(8)

137 Schedule 1, paragraph 3(2)

138 Offences under section 3 of the Sex Offenders Act 1997 are failure to comply with notification requirements or providing false information to the police. Section 91 of the Sexual Offences Act 2003 deals with offences relating to notification.

- an assessment on the risk of sexual harm posed by the offender made by agencies mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008;<sup>139</sup>
- any other information relating to the risk of sexual harm posed by the offender; and
- any other matter the Chief Constable considers to be appropriate.

Paragraph 4 deals with notice of the decision. The Chief Constable is required to notify the offender of this decision within 12 weeks of receipt of the application.<sup>140</sup> If the Chief Constable discharges the notification requirements, notice must be served on the offender and the offender will cease to be subject to notification requirements on the date of service of the notice.<sup>141</sup> If the Chief Constable decides not to discharge the notification requirements, notice must be served on the offender which must state the reasons for the decision.<sup>142</sup>

Paragraph 5 (1) allows the offender to make an application to the Crown Court for an order discharging them from notification requirements if the Chief Constable decides not to discharge the notification requirements or fails to inform the offender of his decision within the 12 week period specified in Paragraph 4. An application to the Crown Court must be made within 21 days on the expiry of the 12 weeks period.<sup>143</sup> The Crown Court must take into account the same matters when making a decision to discharge notification requirements as those provided for in paragraph 2 in relation to the Chief Constable.<sup>144</sup> The paragraph enables the Chief Constable and the offender to appear or be represented at this hearing.<sup>145</sup> If the Crown Court makes or refuses to make an order discharging the offender from notification requirements, the Court must notify the offender and the Chief Constable.<sup>146</sup>

Paragraph 6 (1) provides for a further review period where a decision has been taken by the Chief Constable or Crown Court to require the offender to continue with notification requirements. An offender may apply at the end of a further review period to the Chief Constable to discharge the offender from notification requirements. However paragraph 6 (1) does not apply at any time when an offender is subject to a sexual offences prevention order or interim order, or the offender is subject to notification requirements for a fixed period which has not expired.<sup>147</sup> The further review period is 4 years in the case of an offender under 18 and 8 years in the case of adult offenders.<sup>148</sup>

Paragraph 7 (1) requires the Department of Justice to issue guidance on the making and determination by the Chief Constable of applications. Paragraph 7 (2) allows the Department to revise the guidance from time to time. The Department is required to making arrangements for guidance issued or revised to be published in a manner it considers appropriate.<sup>149</sup>

Paragraph 8 (1) provides that an offender who is discharged from notification requirements in England and Wales, or Scotland, is discharged from the notification requirements as they apply in Northern Ireland.

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139 Article 49 ( of the Criminal Justice (Northern Ireland) Order 2008 specifies the following agencies: Police Service of Northern Ireland, Probation Board for Northern Ireland, Department of Education, Department of Employment and Learning, DHSSPS, Department of Social Development, Health Trusts and Boards, Education and Library Boards, the Northern Ireland Housing Executive and the NSPCC.

140 Schedule 1, paragraph 4 (1) of the Criminal Justice Bill

141 Schedule 1, paragraph 4(2)

142 Schedule 1, paragraph 4(3)

143 Schedule 1, paragraph 5(2)

144 Schedule 1, paragraph 5(3)

145 Schedule 1, paragraph 5(4)

146 Schedule 1, paragraph 5(5)& (6)

147 Schedule 1, paragraph 6(2)

148 Schedule 1, paragraph 6(3)

149 Schedule 1 paragraph 7 (3) of the Criminal Justice Bill

Schedule 2: Articles 63B to 63O of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted.

Schedule 2 of the Bill inserts 14 new articles after Article 63A of the Police and Criminal Evidence (Northern Ireland) Order 1989 and replaces the existing framework on the destruction and retention of DNA profiles and fingerprints.

Article 63B (1) provides for the basic rule in the destruction of fingerprints and DNA profiles. The article applies to fingerprints and DNA profile derived from a DNA sample. Article 63(B) (2) provides that fingerprints and DNA profiles must be destroyed unless the material is retained under any power conferred by Articles 63C to Article 63J. Article 63B (3) provides that DNA profiles and fingerprints must be destroyed unless it is not being retained under the power conferred under Article 63C and the taking of the fingerprints or the taking of sample from which a DNA profile was derived was unlawful or the arrest was unlawful or based on a case of mistaken identity. The Article also allows retention of the material until a speculative search of the databases is carried out.

Article 63C allows DNA profiles and fingerprints taken in connection with the investigation of an offence to be retained until the conclusion of the investigation of the offence or where proceedings are instituted, until the conclusion of those proceedings.

Article 63D applies to DNA profiles and fingerprints which relate to a person who is arrested for or charged with but not convicted of a qualifying offence. Article 63D (2) provides that where a person has been previously convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely. Otherwise Article 63(D) 6 stipulates that fingerprints and DNA profiles may be retained for three years from the date they were taken. The Chief Constable may apply to a District Judge for an order to extend the retention period for a further two years.<sup>150</sup> The Chief Constable or the person from whom the material was taken may appeal to the County Court against an order or a refusal to make an order.<sup>151</sup> The Department of Justice is required to appoint a Northern Ireland Commissioner for the Retention of Biometric Material.<sup>152</sup> The Commissioner, may on application by the Chief Constable, consent to the retention of material under 63D(5) on the grounds that prescribed circumstances apply if the commissioner considers it appropriate to retain the material. An order may be made making provision for the procedure to be followed in relation to the making of an application to the commissioner.<sup>153</sup> Article 63D (14) sets out a number of meanings for the purposes of this article. Prescribed means prescribed made by order of the Department.

Article 63E applies to DNA profiles and fingerprints which relate to persons arrested for or charged with a recordable offence other than a qualifying offence. Article 63 (2) stipulates that if a person has previously been convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely. The EFM explains that where there is no previous conviction the material will be destroyed under Article 63B unless it can be retained under other retention powers provided for in the Bill.<sup>154</sup>

Article 63F allows material to be retained indefinitely in relation to persons who have been convicted of a recordable offence. This Article does not apply to persons under 18 convicted of a first minor offence (i.e. a recordable offence other than a qualifying offence).<sup>155</sup> Article 63G allows for the indefinite retention of material in relation to a conviction of an offence outside Northern Ireland.

150 Article 63D (7) of the Police and Criminal Evidence (Northern Ireland) Order 1989

151 Article 63D(10) of the Police and Criminal Evidence (Northern Ireland) Order 1989, as amended

152 Article 63D (11)

153 Article 63D(13)

154 Explanatory Memorandum to the Criminal Justice Bill introduced in the Northern Ireland Assembly, 25 June 2012, para 77.

155 Article 63 (F) (3) of the Police and Criminal Evidence (Northern Ireland) Order 1989, as amended

Article 63H deal with the retention of DNA profiles and fingerprints in persons under 18 convicted of a minor first offence. The provision applies to a person under 18 who is convicted of a recordable other than a qualifying offence and has no previous convictions.<sup>156</sup> Where the person is given a custodial sentence of less than five years, the material may be retained for five years plus the term of the sentence.<sup>157</sup> Where the person is given a custodial sentence of five years or more on relation to the offence, the material may be retained indefinitely.<sup>158</sup> Where the young person is given a sentence other than a custodial sentence, the retention period five years from the date the material was taken.<sup>159</sup> If the person is convicted of another recordable offence before the end of the retention period, the material may be retained indefinitely.<sup>160</sup>

Article 63I makes provision for the retention of DNA profiles and fingerprints given voluntarily. Material may be retained until it has the fulfilled the purpose for which it was taken.<sup>161</sup> However the material may be retained indefinitely if the person has previously or subsequently been convicted of a recordable offence.<sup>162</sup> The Article does exempt a conviction for a recordable offence if it was committed when the person is aged 18.<sup>163</sup>

Article 63J deals with the retention of fingerprints and DNA profiles with consent. The material may be retained for as long as the person consents to it being retained.<sup>164</sup> Consent must be given in writing and may be withdrawn at any time.<sup>165</sup>

Article 63K makes provision for material obtained for one purpose of an offence leads to a person being arrested, charged or convicted of an a second unrelated offence.<sup>166</sup> The Article provides that the retention of the persons fingerprints and DNA for the first offence will be dealt with by the rules governing the second offence for which the person was arrested or charged.<sup>167</sup>

Article 63L(1) stipulates that where fingerprints are required to be destroyed by Article 63B, copies must also be destroyed. If a DNA profile is to be destroyed, no copy must be retained by police except in a form which does not include information which identifies the person to whom the profile relates.<sup>168</sup>

Article 63M deals with the destruction of samples. The Article provides that samples must be destroyed as soon as a DNA profile has been derived from the sample and no later than six months from the date the sample was taken.<sup>169</sup> The Chief Constable may apply to a District Judge for an order to retain a sample beyond the date the sample would be otherwise destroyed if the sample was taken from a person in relation to an investigation of a qualifying offence or is likely to be needed in criminal proceedings.<sup>170</sup> Under Article 63M (7), the District Judge may make an order to allow the sample to be retained for a period of 12 months beginning with the date from which the sample would be destroyed and may be renewed on one or more occasions for a further period of 12 months from when the order would cease to

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156	Article 63H (1)
157	Article 63 H (2)
158	Article 63 H (3)
159	Article 63(H)4
160	Article 63(H) 5
161	Article 63I (2)
162	Article 63I (3)
163	Article 63 I(4)
164	Article 63J(2)
165	Article 63J (3)
166	Article 63K (1)
167	Article 63K (2)
168	Article 63L(2)
169	Article 63 M (2) (b)
170	Article 63 M (4) and (5)

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have effect. An application for an order may be made without notice to the person from whom the sample was taken and may be heard in private in the absence of that person.<sup>171</sup> A sample must not be used other than for the purposes of any proceedings in relation to any offence for which the sample was taken.<sup>172</sup>

Article 63N(1) provides that fingerprints, DNA profiles and samples must not be used for purposes other than the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution or for the purpose of identification, including a deceased person. Article 63N (2) provides that such material cannot at any time after it is required by Article 63B or 63M to be destroyed be used as evidence against the person to whom the material relates or for investigative purposes.

Article 63O(1) provides that Articles 63B to 63N in this schedule do not apply to material to which paragraphs 20A to 20J of the Terrorism Act 2000 (destruction, retention and use of material from terrorist suspects) apply. Articles 63B to 63N also do not apply to material in relation to paragraph 8 of schedule 4 to the International Criminal Court Act 2001 (requirement to destroy material) or paragraph 6 of the Terrorism and Prevention Measures Act 2011 (requirement to destroy material). The EFM explains that these matters are excepted. These Articles also do not apply to biological material which is taken from a person but relates to another person. Article 63B to 63L and 63N do not apply to material that may become disclosable under the Criminal Procedure and Investigations Act 1996.<sup>173</sup>

### **Schedule 3: Amendments: Fingerprints, DNA, Profiles, etc**

Paragraph 1 amends Article 53 (Interpretation of Part 6) of the Police and Criminal Evidence (Northern Ireland) (PACENI) Order 1989 to add definitions of 63B material, DNA profile and DNA sample. Paragraph 1 (3) of the Schedule inserts new paragraphs 3A and 3B in Article 53 of the 1989 Order. New paragraph 3A excludes the destruction of samples under Article 63M as grounds to take a new sample. New paragraph 3B provides that references to a person being charged with an offence includes persons who are informed that they will be reported for an offence.

Paragraph 2 of schedule 3 adds to the list of qualifying offences, the robbery and intent to rob under section 8 of the Theft Act (Northern Ireland) 1969. Paragraph 3 adds a new Article 53B into PACENI which amends the interpretation of persons convicted of an offence. Paragraphs 4, 6 and 7 are consequential amendments. Paragraph 5 provides that an order made under Article 63D(5) (c) is subject to negative resolution.

### **Schedule 4: Repeals**

Schedule 4 sets out the consequential repeals. Part 1 sets out the repeals in relation to Human Trafficking and Part 2 sets out the repeals in relation to Fingerprints, DNA Profiles, etc..

## 5 Human Rights and Equality Issues

The EFM corresponding to the Bill states that all proposals have been screened and are considered to be compatible with the ECHR. Furthermore the EFM emphasises that the Bill contains provisions which remedy incompatibilities with the ECHR that were highlighted by the European Court of Human Rights and the UK Supreme Court. The EFM also highlights that the policy proposals within the Bill have been screened out as not having an adverse impact on any of the Section 75 categories in the Northern Ireland Act 1998.

171 Article 63M (8)

172 Article 63M (9)

173 Article 63O (5) of the Police and Criminal Evidence (Northern Ireland) Order 1989

## 6 Financial and Regulatory Impact

The EFM indicates that the implementation of the DNA and fingerprint retention provisions in the Bill will incur costs particularly in relation to the retrospective destruction of existing material. It has been estimated this will cost the PSNI in the region of £2.5m. The funding will be sought from within existing resources for the 2013/2014 financial year. The EFM states that the financial implications for the sex offender and human trafficking provisions will be met within existing resources. In relation to the Regulatory Impact Assessment, the EFM states that there will be no direct costs created for the private or voluntary sectors.<sup>174</sup>

### Annex A- Comparative Table on DNA/ Fingerprint Retention Policies<sup>175</sup>

<b>Occurrence</b>	<b>Scottish System</b>	<b>England and Wales Protection of Freedoms Act 2012</b>	<b>Northern Ireland proposals</b>
Adult- Conviction- All Crimes	Indefinite	Indefinite	Indefinite
Adult Charged but not convicted – Serious Crime	3 years + possible 2 year extension(s) on application to court	3 years + single 2 year extension on application to court	3 years + single 2 year extension on application to court
Adult arrested but not charged- serious crime	Immediate Destruction	Immediate destruction (unless prescribed circumstances apply then 3 years retention +possible single two year extension on application to court )	Immediate destruction (unless prescribed circumstances apply then 3 years retention +possible single two year extension on application to court)
Adult-non conviction- Minor Crime	Immediate Destruction	Immediate Destruction	Immediate Destruction
Under 18- Conviction- serious crime	Indefinite	Indefinite	Indefinite
Under 18- Conviction- Minor Crime	Indefinite	1st Conviction- 5 years (for non- custodial sentence) or length of sentence+ 5 years (for custodial sentence) If custodial sentence over 5 years-indefinite 2nd Conviction- indefinite	1st Conviction- 5 years (for non- custodial sentence) or length of sentence+ 5 years (for custodial sentence) If custodial sentence over 5 years-indefinite 2nd Conviction- indefinite
Under 18- Charged but not convicted- serious crime	3 years + two year extension(s) on application to court	3 years + single two year extension on application to court	3 years + single two year extension on application to court

174 Explanatory memorandum of the Criminal Justice Bill as introduced in the Northern Ireland Assembly, 25 June 2012, para 95, 98

175 Information obtained from Department of Justice Briefing paper to the Committee on DNA/Fingerprints retention policy in NI, 1 September 2011 and Annex B of Explanatory Memorandum of the Protection of Freedoms Act 2012

<b>Occurrence</b>	<b>Scottish System</b>	<b>England and Wales Protection of Freedoms Act 2012</b>	<b>Northern Ireland proposals</b>
Under 18- arrested but not charged- serious crime	Immediate Destruction	Immediate destruction unless prescribed circumstances apply - 3 years retention +possible single two year extension on application to court	Immediate destruction unless prescribed circumstances apply - 3 years retention +possible single two year extension on application to court
Under 18- non-conviction-Minor crime	Immediate Destruction	Immediate Destruction	Immediate Destruction



Northern Ireland  
Assembly

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Research and Information Service  
Research Paper

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3 September 2012

NIAR 514-12

**Fiona O'Connell**

# Issues raised in relation to the Department of Justice legislative proposals on Human Trafficking

This research paper examines issues raised by respondents to the Department of Justice legislative proposals on human trafficking in order to comply with the EU Directive 2011/36/EU and considers if other EU Countries have dealt with these issues in legislation

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## Key Points

The Department of Justice has introduced a Criminal Justice Bill which proposes two amendments to the legislation on trafficking to comply with an EU Directive.

Respondents during the consultation process and Lord Morrow in a Private Member's Bill consultation paper have highlighted areas where the Assembly could go further in implementing the Directive. The following key areas have been highlighted.

**Increased penalties.** While the proposals go further than is required by the Directive, some respondents have suggested strengthening the penalties and including aggravating factors in the legislation. Some EU countries stipulate minimum imprisonment terms in legislation, or specify aggravating circumstances or circumstances where a higher maximum penalty applies.

**Non-criminalisation/non-prosecution of victims.** Some respondents suggest the legislation should provide for non-prosecution of victims. Some EU countries are considering addressing this in legislation though the UK position is this can be dealt with in guidance.

**Treatment of victims in criminal proceedings.** Some respondents called for this to be spelled out in legislation. Some other EU countries provide for special protection for victims in legislation, or legal aid /counselling for victims. Portugal provides that prosecution is not dependent on reporting or accusation by the victim.

**Definition of trafficking.** Some respondents suggested the definition was inadequate drawing attention to forced begging and exploitation of crime. Some other EU states cover forced begging explicitly in their legislation or are considering proposals to do so.

**A guardian for trafficked children.** Some respondents suggested that such a guardian is required. Some other EU countries provide for representatives for child trafficking victims.

**National rapporteur.** Some respondents considered that current arrangements are inadequate. EU countries are at different stages on this. Some have established equivalent mechanisms, while others are still considering how to implement this. The Netherlands has established an independent body to discharge this functions. The Minister has noted that the Home Office is determined that the current inter-ministerial group is appropriate.

**Paying for sexual services.** Lord Morrow's Bill proposes to criminalise this arguing that the current requirement that coercion be shown is too onerous. EU countries approach this question differently: some prohibit prostitution, some regulate it while others permit but prohibit brothels or profiting from another's prostitution.

## Executive Summary

- In June 2012, the Justice Minister introduced a Criminal Justice Bill which included two clauses on human trafficking in order to comply with an EU Directive.
- Respondents raised a number of issues during the consultation process about the Department's legislative proposals in the Criminal Justice Bill regarding the implementation of the EU Directive on Human Trafficking.

### **Increased Penalties**

- Some respondents suggested that penalties should be strengthened (eg QUB School of Law Organised Crime Project suggested that penalties in other relevant legislation could be strengthened). Another suggestion was that there should be a mandatory prison sentence (NIEA). It was also suggested that there should be a list of aggravating factors specified in the legislation (CARE),
- It would appear that there are legislative provisions in Ireland to provide that persons convicted of trafficking should be sentenced to imprisonment, with the possibility of a fine in addition. In several countries there appears to be a minimum sentence stipulated for some trafficking offences (eg Germany, Hungary, Italy, Portugal, Slovakia, and Sweden).
- Some of the overviews suggest that penalties for trafficking are seen as similar to those for other serious crimes such as sexual assault (Estonia) or rape (Romania).
- In some countries, a life sentence is possible (Hungary, Ireland, Slovakia).
- Several systems provide for aggravating factors in legislation or provide that a higher maximum penalty is available in specified circumstances (eg Belgium, France, Germany, Hungary, Italy, Lithuania, and Portugal).
- The UK position is that the maximum penalty of 14 years goes beyond what is required in the Directive (10 years) and so no change is needed.
- The maximum penalty in the offences included in the Criminal Justice Bill is also 14 years.

### **Non-criminalisation/Non-Prosecution of Victims**

- Some respondents referred to the need for protection of victims, including protection from prosecution.
- Article 8 of the Directive deals with this.
- Poland is considering whether prosecutorial guidelines are sufficient to implement article 8 or is it required to amend the Penal Code. It also appears to be the case in Latvia that proposals to implement the Directive will address non-punishment of victims of trafficking. It appears that Bulgaria is considering legislation (decrees) about dropping prosecution for illegal border crossing against trafficking victims where the offence was committed under duress.
- The UK position is that guidance for law enforcement and prosecutors adequately deals with this issue.

### **Treatment of Victims in Criminal Proceedings**

- Some respondents highlighted issues relating to the treatment of victims in criminal proceedings and made suggestions such as automatic eligibility to special measures, protection for victims acting as witnesses and proper access to legal counselling.
- These issues are dealt with in Articles 9, 11, 12, 15, 16 and 17 of the Directive.
- In the Netherlands, special procedural rules apply in the case of minors to avoid direct contact between the perpetrator and victim.

- Amendments have been made to the Criminal Code in Poland to improve the rights of victims in interviews.
- In Portugal, prosecution of the crime is not dependent on reporting or accusation by the victim.
- Attention was drawn in relation to provisions in England and Wales on access to legal aid for victims of labour trafficking. Some Member States provisions allow for legal counselling/legal aid for trafficking victims (Portugal and Ireland).
- One response highlighted difficulties in victims have faced in accessing compensation in England and Wales and that there should be clarity in NI Legislation as to what rights victims have to compensation schemes. A number of EU Member States provide compensation to trafficking victims (including Lithuania, Luxembourg, Portugal, Slovakia and the UK). Poland will be giving special focus to this issue in implementing the Directive. Lord Morrow proposes that his Bill would require the Department of Justice to set out how a trafficking victim could apply for compensation.
- The UK government does not believe it appropriate for a victim to be given legal representation in criminal proceedings when the victim is not a party in such proceedings; most of the other matters (compensation, support for victims) are provided for as a matter of practice

#### **Definition of Trafficking**

- Some respondents suggested that there was a lack of an adequate definition of trafficking. One respondent (CARE) suggested that the definition of trafficking should explicitly include ‘forced begging’ and ‘exploitation of criminal activities’; Lord Morrow also drew attention to this in the second stage debate.
- Article 2 of the Directive mentions forced begging and exploitation of crime.
- In the Netherlands, it would appear that certain elements of the definition in the Directive such as forced begging may not be encompassed by the existing legislation and a bill has been introduced which addresses this. In Austria, it was considered the legislation covered forced labour or services but it was suggested Austria would like to include the offence “forced begging” in its revised criminal law provisions.
- Exploitation for begging is already covered in the French Penal Code definition; in Romania special protection for minors includes protection from forced begging or exploitation for begging.
- The UK Government position is that it is largely compliant although it acknowledges that current legislation is narrower in scope than the Directive’s reference to ‘exploitation of criminal activities’. However, the CPS is able to prosecute where criminal activities have led to a person receiving benefits or services.

#### **A Guardian for Trafficked Children**

- Some respondents suggested raised the issue of a Guardian for child victims is needed and that current arrangements are inadequate as a high proportion of rescued child victims in the UK are found to be re trafficked.
- A Guardian or Representative is provided for in Article 14 of the Directive;
- In Finland, Poland and Portugal, the systems provide for guardians or representatives in relation to child trafficking victims.
- The UK Government has identified measures taken with regard to this issue and proposes no new measures.

### **National Rapporteur**

- Some of the respondents drew attention to the issue of a national rapporteur and noted that current arrangements are inadequate primarily as they are not independent from Government.
- Article 19 of the Directive deals with this.
- Some countries have not yet appointed a National Rapporteur (eg Austria, France). Others have an equivalent mechanism where the role is discharged by a Ministerial Delegate or an inter-ministerial committee (Poland, Spain).
- In the Netherlands, the National Rapporteur is an independent agency.
- The Justice Minister, speaking in the second stage debate, highlighted he was aware of the concerns around the current arrangements but that the Home Office are determined that the inter-ministerial group is appropriate to carry the national rapporteur arrangements.

### **Paying for Sexual Services**

- This is not covered in the Directive or the Department's proposals, but one respondent noted the Irish Minister for Justice is reviewing legislation and there is pressure for the introduction of measures to criminalise the purchase of sexual services;
- Across the EU some states prohibit prostitution, some regulate it, and some permit it but prohibit brothels or profiting from another's prostitution;
- Lord Morrow's Private Member's Bill consultation proposes making paying for sexual services illegal.
- A Private Member's Bill has been proposed in Scotland to criminalise the purchase of sex in Scotland.



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# 1 Introduction

The Justice Minister introduced a Criminal Justice Bill in the Northern Ireland Assembly in June 2012. The Bill includes two clauses on human trafficking which aim to achieve compliance with the EU Directive 2011/36/EU of the European Parliament and Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. The EU Directive contains a number of provisions relating to:

- Offences concerning trafficking in human beings (Article 2);
- Penalties (Articles 4 and 7);
- Non-Prosecution and Application of penalties to the victim (Article 8);
- Investigation and Prosecution (Article 9);
- Jurisdiction (Article 10);
- Assistance and Support (Article 11);
- Protection (Article 12);
- Provisions on assistance, support and protection for child victims, including unaccompanied children (Articles 13-16);
- Compensation (Article 17);
- Prevention (Article 18);
- National Rapporteurs and Equivalent mechanisms (Article 19)

During the consultation stage of the policy proposals underpinning the Bill, consultees raised a number of concerns that the Department was taking a minimal approach in implementing the requirements of the Directive, highlighting areas where the legislation could be strengthened. These issues include increased penalties; non criminalisation/non prosecution of victims; the treatment of victims in criminal proceedings; the lack of an adequate definition of trafficking; the provision of a guardian or a representative for trafficked children and the creation of an independent national rapporteur. Lord Morrow MLA has published a consultation paper on plans to introduce a Private Member's Bill on human trafficking which aims to improve assistance and support to victims, provisions for addressing demand and investigations and prosecutions.<sup>1</sup> Lord Morrow argues that, if the provisions are not put on a statutory footing, there is no guarantee that resources will be put into reducing trafficking and caring for victims.

This research paper provides information on the ways other EU countries have dealt with the issues raised in response to the Department's consultation. This research paper draws heavily on reports from the European Commission and from the EU Tracker database as these compile this information from the Member States in English. These resources provide overviews and are therefore necessarily a summary of the position in the 27 Member States rather than detailed legal analysis of the legislative proposals. The Commission and EU Tracker overviews also provide information on the policies and legislation in the Member States apart from measures specifically to implement the Directive. It is not always clear from the material whether individual measures already in existing national legislation are deemed to satisfy the Directive or how precisely the law will be changed by any proposed implementing measures. Many states are still at an early stage in transposing the Directive and some appear not to have taken any concrete steps yet. As this research Paper is based on the overviews mentioned, and taking into account possible issues of translation, it should not be considered an authoritative statement of the legal position in other EU countries. It should be noted that some of the points below relate to existing legislative or policy provision in the Member States rather than specifically to any measure implementing the Directive.

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1 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>

## 2 Legislative Proposals Relating to Human Trafficking

The Justice Minister David Ford introduced the Criminal Justice Bill in the Northern Ireland Assembly on 25 June 2012 which includes two new human trafficking offences to comply with the EU Directive. Article 10 of the EU Directive requires Member States to take necessary measures to establish jurisdiction where the offences set out in the directive are committed wholly or partly within their territory or where the offender is one of their nationals. In order to comply with the Directive, Northern Ireland needs to create two offences:

To amend section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 to create an offence where D trafficks another person (V) within the UK who was not already trafficked into the UK (for example from London to Belfast)

To amend both the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants) Act 2004 to establish Extra-Territorial Jurisdiction and create an offence when a UK national (D), or a person who is habitually resident in the UK trafficks V anywhere outside the UK (for example, if the UK national trafficked someone from Mexico to Brazil.)

These new offences are set out in clauses 5 and 6 of the Criminal Justice Bill and a person guilty of these offences is liable on summary conviction to a maximum six months term of imprisonment or a fine or both; and on conviction on indictment, a person found guilty of an offence is liable to a maximum term of imprisonment of 14 years.<sup>2</sup>

Northern Ireland is following the approach taken in England and Wales. The position of the UK Government is that it is technically compliant with most aspects of the EU Directive; however, there were two aspects where primary legislation was needed in order to achieve compliance. The first change required was to criminalise trafficking by a UK National which takes place anywhere in the world. The second change required amending the existing offence of trafficking for the purpose of labour and other exploitation provided for in the Asylum and Immigration (Treatment of Claimants) Act 2004 so that it applies where trafficking takes place wholly within the UK and the person has not been previously trafficked into the UK.<sup>3</sup> These offences are now contained in sections 109 and 110 of the Protection of Freedoms Act 2012 and they apply to England and Wales only. The Act was given Royal assent on 1st May 2012, however sections 109 and 110 of the Act have not yet commenced.

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2 See clauses 5 and 6 of the Criminal Justice Bill and Explanatory Memorandum. Note that the penalty for Clause 6 is set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2005 which must also be read in conjunction with section 5(13) of the 2004 Act

3 Protection of Freedoms Bill Fact Sheet, part 7, Miscellaneous and General, available at <http://www.homeoffice.gov.uk/publications/about-us/legislation/freedom-bill/fact-sheet-part7?view=Binary>

### 3 Issues Raised by Respondents in Relation to the Department's Legislative Proposals

A number of respondents suggested that the Department was following the approach taken in England and Wales and was taking a minimalist approach in implementing the EU Directive.<sup>4</sup> The Northern Ireland Commissioner for Children and Young People (NICCY) highlighted that the obligation to comply with the Directive does not preclude the UK from taking additional measures which would further progress the legislative and policy framework.<sup>5</sup>

Issues raised during the consultation are discussed in the following subsections and include: increased penalties; non criminalisation/non prosecution of victims; the treatment of victims in criminal proceedings; the lack of an adequate definition of trafficking, the provision of a guardian or a representative for trafficked children and the creation of an independent national rapporteur. It should be noted that the Department highlighted that it intended to compile the issues and refer them to the Organised Crime Task Force Immigration and Human Trafficking sub group.<sup>6</sup> The Chairperson of the Justice Committee highlighted to departmental officials that concerns were raised that more could be done and asked if a minimal approach was being taken in complying with the EU Directive. Officials responded that the priority was to ensure compliance with the criminal aspects of the EU Directive but acknowledged that other suggestions were made during the consultation and in Lord Morrow's Bill.<sup>7</sup>

In the following sections, the relevant provisions in the Directive are introduced, followed by the issues raised in the consultation process and in Lord Morrow's Private Member's Bill consultation paper. Then the approach of other EU states is described. Each section concludes with the views of the NI or UK authorities.

#### 3.1 Increased Penalties

Article 4 makes provision for penalties, requiring Member States to take necessary measures to ensure that an offence set out in article 2 is punishable by a maximum penalty of at least five years imprisonment. Article 4(2) also requires Member States to take necessary measures to ensure that an offence under article 2 is punishable by a maximum period of at least 10 years imprisonment in the following circumstances: where the offence:

was committed against a person who was particularly vulnerable including child victims;

was committed within the framework of a criminal organisation;

deliberately or by gross negligence endangered the life of a victim; or

was committed by use of serious violence or has caused particularly serious harm to the victim.

Article 4 (3) also requires Member States to ensure that that the fact an offence referred to in article 2 is committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

4 See the Department of Justice Briefing paper to the Justice Committee on the Consultation Responses received in relation to proposals on legislative amendments required for Northern Ireland required for Northern Ireland to comply with the EU Directive, 12 June 2012

5 Information obtained from submission made by NICCY to the Department of Justice Consultation on legislative amendments and Department of Justice engagement in relation to human trafficking, 31 May 2012

6 Department of Justice briefing paper to the Justice Committee, 12 June 2012.

7 <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2011-2012/june-2012/criminal-justice-bill--doj-briefing/>

In relation to the Department's legislative proposals to implement the Directive, the Queen's University of Belfast (QUB) School of Law Organised Crime Project welcomed the legislative amendments implementing extra-territorial jurisdiction however suggested that other amendments could be made to amend other relevant legislation to strengthen law and reduce demand. One suggestion was to increase sentences for offences contained in other relevant legislation relating to sexual and labour exploitation. QUB provided examples of existing legislation which could be strengthened. QUB pointed to the penalties in section 15 of the Police and Crime Act 2009 which deal with the paying of sexual services of a prostitute subject to force and questioned whether a fine not exceeding level 3 on the Standard Scale (£1000) serves as a strong deterrence and recommended an increase in the fine. It was suggested this should also apply to the offence of soliciting under the Sexual Offences (Northern Ireland) Order 2008 if a client purchases sexual services of a trafficked victim. QUB also recommended in cases where clients purchase sexual services with the full knowledge that providers are trafficked victims, the level of punishment should be increased, possibly with the imposition of a custodial sentence. QUB also suggested Sex Offender Registration could be considered for repeat offenders. The Northern Ireland Evangelical Alliance also suggested that those found guilty of using trafficked people for forced sex should face prison and be put on the sex offenders register.<sup>8</sup>

QUB also suggest that the penalty for acting as a gangmaster without a proper licence in the UK, including NI is 10 years imprisonment and that this could be further increased. The Organised Crime Project highlighted that the penalty on summary conviction for the same offence in NI attracts a maximum of six months imprisonment where it is 12 months in England and Wales. QUB suggest there is no justification for this anomaly between the two jurisdictions and that the Department should seek to make further amendments.<sup>9</sup>

The Northern Ireland Evangelical Alliance (NIEA) recommends there should be mandatory prison sentences for trafficking offences, stating that the principle of prison for convicted traffickers provides a consistent and firm policy framework for dealing with the supply and demand of the trafficking trade.<sup>10</sup> Urban Angels also called for increased penalties which they believe are not currently harsh enough to act as deterrents. They cited a recent case in which a perpetrator was sentenced to an 18 month jail term, which they suggested, is not commensurate with the crime.<sup>11</sup>

CARE suggested that the aggravating factors listed in Article 4 (2) of the Directive should be specified in legislation governing NI in order to comply with the Directive.<sup>12</sup> Lord Morrow has included aggravating factors amongst his suite of proposals to be included in a Private Member's Bill which is intended to improve assistance and support to victims, addresses demand and investigations and prosecutions. Lord Morrow proposes that Clause 2 of the Draft Bill would include a list of aggravating factors reflecting those contained within Article 4 of the Directive ie: that the crime was committed by a public official when they were doing their duties; the victim was a child or vulnerable adult; the criminal was part of an

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8 Northern Ireland Evangelical Alliance Briefing Note attached to Consultation Response to Amendments UK Legislation to comply with EU Directive 2011/36/EU.

9 Information obtained from Submission by the QUB School of Law Organised Crime Project to the Department of Justice Consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004

10 Information obtained from Submission made by the Northern Ireland Evangelical Alliance to the Department of Justice Consultation on Amendments to UK legislation to comply with the EU Directive 2011/36/EU

11 Information obtained from submission made by Urban Angels to the Department of Justice Consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004, 2 May 2012.

12 Information obtained from a submission made by CARE in Northern Ireland to the Department of Justice consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 proposed amendments to comply with EU Directive 2011/36/EU, 31 May 2012

organisation; the life of the person was endangered and there was use of serious violence or serious harm.<sup>13</sup>

The issue of sentencing and penalties differs across the EU member States. In some EU Member States, some of the penalties for trafficking are similar to those for other serious crimes. In Estonia, the Criminal Code does not include trafficking for human beings in the Penal Code; however, other articles in the Code are used to prosecute the crime. The penalties for trafficking range from five to 15 years imprisonment, which according to the EU Tracker, are aligned to penalties for other serious crimes such as sexual assault.<sup>14</sup> Similarly, in Romania, penalties for human trafficking are commensurate with penalties prescribed for serious crimes such as rape, with penalties ranging from three to fifteen years imprisonment.<sup>15</sup>

Some EU Member States stipulate minimum sentences in legislation. For example in Germany, the Criminal Code stipulates a penalty of imprisonment ranging between six months and 10 years.<sup>16</sup>

In Hungary, §175/A of the Criminal Code, provides that a person who sold, purchased, passed for consideration, took over or changed somebody for another person and also who recruited, transferred, accommodated, hid somebody for that purpose or acquired somebody for somebody else was punishable by a maximum penalty of 3 years of imprisonment. The Code further stipulates longer penalties if the offence was committed against certain victims or for certain purposes or by certain methods. For example if the victim was under 18 years or the purpose of the trafficking was labour or prohibited use of human body, the act was punishable by an imprisonment of 1 to 5 years. The Code provides further penalties for terms of imprisonment between 2 and 8 years where the victim was in the care, supervision or medical treatment of the perpetrator. Certain cases were punished by 5 to 10 years of imprisonment and, there are higher penalties of 5 to 20 years imprisonment or life imprisonment for certain offences for example where a victim is younger than 12 years or where there is a use of threats or force. An attempt at committing human trafficking was punishable by 2 years of imprisonment.<sup>17</sup>

In Italy, penalties in human trafficking cases range from eight years to 20 years imprisonment.<sup>18</sup> In Portugal, the Penal Code imposes sanctions ranging from 3 to 10 years imprisonment.<sup>19</sup> In Slovakia, the penalty for trafficking in human beings under the Criminal Code is four to 10 years and can attract penalties for other types of trafficking of prison terms ranging between seven and 12 years, for a term between 12 and 20 years and for a term between 20 and 25 years and a term of life.<sup>20</sup> In Sweden, the main legislative provisions on human trafficking can be found in the Criminal Code which prohibits all kinds of trafficking and provides penalties of imprisonment ranging between two and ten years.<sup>21</sup>

In some of the EU Member States, a life sentence is possible. In Ireland, the Child Trafficking and Pornography Act 1998 provides that a person guilty of organising or knowingly facilitating trafficking of a child for the purposes of sexual exploitation shall be liable on conviction on

13 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, pg 9. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>, see also Clause 2 Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, available at <http://www.niassembly.gov.uk/Documents/Legislation/Bills/Private-Members-Bills/Session-2011-12/human-trafficking-bill/Human-Trafficking-and-Exploitation-Draft-Bill.pdf>

14 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Estonia#A4>

15 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Romania>

16 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=Germany>

17 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=Hungary>

18 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Italy>

19 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Portugal>

20 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Slovakia>

21 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Sweden>

indictment to imprisonment for life.<sup>22</sup> The Criminal Law (Human Trafficking) Act 2008 which prohibits trafficking provides that a person guilty of an offences specified in the legislation is liable for a term of up to life imprisonment, and at the discretion of the court, to a fine.<sup>23</sup>

It would appear that several countries provide for aggravating factors in legislation. The Belgian System does not make a distinction between trafficking in human beings and trafficking in children, however if the victim is a child, this constitutes an aggravated circumstance and results in an increased penalty. The penalty amounts to a jail sentence from one to five years and a fine from 500 to 50,000 Euros.<sup>24</sup> In the Czech Republic, the Criminal Code includes increased penalties for a perpetrator who acts as a member of an organised group. The Criminal Code also provides that child trafficking for the purposes of removal or organs or sexual exploitation is punishable by a penalty of between two and ten years. The penalty also applies in cases of trafficking in other persons where there has been use of violence and abuse of dependence.<sup>25</sup> The French Penal Code provides for penalties of seven years imprisonment and a fine of 150,000 Euros however, increased penalties are possible pursuant to article 225-4-1. This provides that if human trafficking is committed against a minor or a person who is particularly vulnerable, then it is punishable by 10 years imprisonment and by a fine of 1,500,000.<sup>26</sup>

In the German Criminal Code, penalties for human trafficking range from six months to 10 years imprisonment (Article 232 (StGB)). However, in the case where the victim is a child or has been severely abused or endangered with death or the trafficking has been committed as part of organised crime the minimum sentence is raised to one year imprisonment.<sup>27</sup> The Hungarian Criminal Code provides longer penalties if the offence was committed against certain victims or for certain purposes or by certain methods. For example if the victim was under 18 years or the purpose of the trafficking was labour or prohibited use of the human body, the act was punishable by an imprisonment of 1 to 5 years. The Code provides for terms of imprisonment between 2 and 8 years where the victim was in the care, supervision or medical treatment of the perpetrator. Certain cases are punished by 5 to 10 years of imprisonment and, there are higher penalties of 5 to 20 years imprisonment or life imprisonment for certain offences for example where a victim is younger than 12 years or where there is a use of threats or force.<sup>28</sup> In Italy, penalties range from eight to 20 years imprisonment. For the offences of sexual exploitation or slavery, the penalties are increased by one third if the victim is under 18 years of age (Article 600 of the Penal Code).<sup>29</sup> In Lithuania, the criminal code sets out aggravating circumstances which include: two or more victims, offences committed by participating in an organised group or by seeking to acquire the victim's organ, tissue or cells (Article 147 and 157).<sup>30</sup> In Portugal, the law provides for penalties of three to ten years imprisonment which are aligned with other serious crimes, however the penalty is increased to a maximum of 12 years imprisonment if the crime is conducted as a professional act with intention to profit.<sup>31</sup>

The UK Government position on the implementation of Article 4 of the Directive on penalties is that no further implementation is required. The Government indicated that the current maximum penalty for a trafficking offence is 14 years and the Directive requires a maximum

22 <http://www.irishstatutebook.ie/1998/en/act/pub/0022/sec0003.html#sec3>

23 <http://www.irishstatutebook.ie/2008/en/act/pub/0008/sec0002.html#sec2>

24 <http://www.lexisnexis.com/EUTracker/greymatter.aspx?celex=32011L0036&country=Belgium>

25 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=Czech Republic>

26 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=France>

27 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=Germany>

28 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=Hungary>

29 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Italy>

30 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?jsessionid=K5GmQ18X2TpPK1NTyOdwjrH92KpwC342TyJR6hx7RyhyTTT2JpF6l1158633405?country=Lithuania>

31 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Portugal>

of 10 years. Therefore, there would be no legislative change or additional cost other than those related to extra-territorial jurisdiction beyond those related to extra-territorial jurisdiction.<sup>32</sup> The maximum penalties relating to the offences set out in the Criminal Justice Bill in Northern Ireland are also 14 years which would therefore arguably also go beyond what is required by the Directive.

### 3.2 Non Criminalisation/Non-Prosecution of Victims

Article 8 of the EU Directive makes provision for the non-prosecution or non-application of penalties to victims of human trafficking for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to acts set out in Article 2.

In response to the Department of Justice's legislative proposals, QUB Organised Crime Project raised the issue about the non-criminalisation of victims of trafficking and emphasised strongly the importance that victims who are forced to commit criminal activities should not be prosecuted or punished. QUB Organised Crime Project suggested that the inclusion of a provision on non-criminalisation of trafficked victims can strengthen the protection of victims and would be more in line with Article 8 of the Directive. It was also highlighted that a number of other jurisdictions such as Austria, Finland, Malaysia, South Africa, Spain and the United States have statutory provisions and Northern Ireland and the United Kingdom should follow suit.<sup>33</sup> CARE suggests that the Directive does not require this to be enshrined in primary legislation, however provision must be made to ensure that there are robust guidelines in place concerning the non-prosecution of victims.<sup>34</sup>

Lord Morrow proposes to include clauses in his Private Member's Bill on protecting the victim from prosecution (Clause 5(3) of the draft Bill. This proposal would ensure that no prosecution or penalty would happen in certain circumstances as recommended in Article 8 of the Directive. This would include if the victim had been forced to commit a crime as a direct consequence of:<sup>35</sup>

- Threats, the use of force or other forms of coercion;
- Abduction;
- Fraud;
- Deception;
- Abuse of power or position of vulnerability;
- Giving/ receiving of payments or benefits to someone with control over the trafficked person to get their consent.

In Latvia, plans have been submitted to the Government for approval on amending criminal law and criminal procedural law in order to implement the EU Directive, These plans appear to include the non-punishment of victims of trafficking.<sup>36</sup> In Poland, indications are that

32 [http://europeanmemorandum.cabinetoffice.gov.uk/memo\\_details.aspx?memoID=4174](http://europeanmemorandum.cabinetoffice.gov.uk/memo_details.aspx?memoID=4174)

33 Information obtained from Submission by the QUB School of Law Organised Crime Project to the Department of Justice Consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004

34 Information obtained from a submission made by CARE in Northern Ireland to the Department of Justice consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 proposed amendments to comply with EU Directive 2011/36/EU, 31 May 2012

35 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, pg 14. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>, see also Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill, available at <http://www.niassembly.gov.uk/Documents/Legislation/Bills/Private-Members-Bills/Session-2011-12/human-trafficking-bill/Human-Trafficking-and-Exploitation-Draft-Bill.pdf>



attention will be given to Article 8 and a group of experts will be responsible for deciding if existing prosecutors' guidelines are sufficient to ensure the best interests of the victim or whether there will need to be amendments to the Penal Code.<sup>37</sup> In Bulgaria, consideration is being given to criminal law decrees related to human trafficking, also including an option of providing those relating to the protection of victims of trafficking, in the new Penal Code about dropping of the prosecution against victims of human trafficking in art. 279, par. 5 of the Penal Code (illegal crossing of the border), where the offence was committed under duress, during the commission of the crime "human trafficking".<sup>38</sup>

The UK Government position on the implementation of Article 8 of the Directive is that the law, policy and operational guidance for law enforcement and prosecutors permit non-prosecution of victims who have been compelled or coerced to commit criminal offences as a result of their trafficked situation. Therefore, no operational changes are needed.<sup>39</sup>

### 3.3 Treatment of Victims in Criminal Proceedings

A number of articles in the EU Directive relate to the treatment of victims in criminal proceedings. Article 9 of the Directive requires Member States to ensure the investigation and prosecution of offences set out in the directive and that such measures should not be dependent on the reporting by the victim. Furthermore, this article of the Directive requires Member States to ensure that investigation and prosecutions continue in cases where the victim has withdrawn their statement.

Article 11 of the Directive requires Member State to take necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time, after the conclusion of criminal proceedings. Assistance and support measures shall be provided on an informed and consensual basis and shall include standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, translation and interpretation services where appropriate. Article 12 requires Member States to ensure the protection of victims of trafficking in criminal proceedings including ensuring legal counselling and representation (including for the purpose of claiming compensation). Legal counselling and representation shall be free of charge where the victim does not have sufficient financial resources.

Article 15 requires Member States to ensure the protection of child victims in criminal proceedings. Article 15 (1) requires Member States to appoint a representative for a child trafficking victim where holders of parental responsibility are precluded from representing the child due to a conflict of interest. Article 15 (2) requires Member States to ensure that child victims have access without delay to free legal counselling and legal representation including for the purpose of claiming compensation, unless they have sufficient financial resources. Article 15(3) deals with interviews with child victims. Article 15 (4) allows interviews to be video-recorded and to allow such interviews to be used in criminal proceedings. Article 15 (5) provides for special measures including the hearing may take place without the presence of the public and that the child can be heard in the courtroom without being present through the use of appropriate technology.

Article 16 requires Member States to take necessary measures to ensure that the specific actions to assist and support child victims, take account of the personal and special circumstances of child victims. Article 17 requires Member States to ensure that victims

37 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Latvia#A4>

38 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Bulgaria#A4>

39 [http://europeanmemorandum.cabinetoffice.gov.uk/memo\\_details.aspx?memoID=4174](http://europeanmemorandum.cabinetoffice.gov.uk/memo_details.aspx?memoID=4174)

of human trafficking have access to existing schemes of compensation to victims of violent crimes of intent.

In response to the Department of Justice's legislative proposals, South Tyrone Empowerment Programme (STEP) suggested that consideration be given to Article 12 (4) of the Directive to ensure that victims of trafficking are automatically eligible for special measures during court proceedings. They also suggest consideration be given to Article 15 in relation to the protection of child victims of trafficking in human beings in criminal investigations and proceedings and recommended the need for Young Witness Preparation and Support Services to be enshrined in legislation.<sup>40</sup> Clause 12 of Lord Morrow's Bill proposes to extend special measures for human trafficking victims acting as witnesses. Lord Morrow notes that there is already provision of special measures for victims for trafficking for sexual exploitation and his Bill proposes to extend these to other types of exploitation.<sup>41</sup>

In the Netherlands, special procedural rules apply in the case of minors including optional close door interrogations and avoiding direct contact between the victim and suspect.<sup>42</sup> In Poland, amendments have been made to the Criminal Code aimed at improving the rights of victims, particularly interviews with victims.<sup>43</sup>

Two respondents highlighted, in relation to the treatment of victims in criminal proceedings, that the Directive states that proceedings should be able to continue if the victim withdraws their statement; however the respondents noted that in the UK criminal proceedings are heavily dependent on the testimony of the victim and the level of trauma experienced or fear can make them poor witnesses, leading to low levels of convictions. The respondents suggested that victims should expect to be protected if they act as a witness but there is no current provision for this.<sup>44</sup>

It should be noted that in Portugal the crime is not dependent on the reporting or accusation by the victim – this is described as a measure showing Portugal is in the frontline concerning the Directive.<sup>45</sup>

CARE highlighted the issue of access to legal advice and how it is unclear whether current support is offering this to an adequate level. CARE points to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 which includes provisions ensuring victims of labour trafficking have proper access to free counselling. CARE recommended that legislation enshrines adequate protection for victims of trafficking during the investigation and prosecution of an offence, including amendments to existing legislation to ensure special measures for trafficking victims acting as witnesses.<sup>46</sup>

In relation to the issue of legal aid and legal counselling, the framework in Portugal provides for legal counselling. In Ireland, Part 2 of the Civil Law (Miscellaneous Provisions) Act 2011 amends section 26 of the Civil Legal Aid Act 1995. The provisions specify that the Legal

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40 Submission by STEP to the Department of Justice's Consultation on Amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants' etc) Act 2004, 25 May 2012,

41 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, pg 17-18. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>, see also Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

42 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Netherlands>

43 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Poland>

44 Information obtained from submission made by a respondent to the Department of Justice Consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004. 30 May 2012

45 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Portugal>

46 Information obtained from a submission made by CARE in Northern Ireland to the Department of Justice consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 proposed amendments to comply with EU Directive 2011/36/EU, 31 May 2012

Aid Board shall grant legal advice to a person who is an alleged victim of human trafficking offence in relation to:

- Any matter in connection with the commission of the human trafficking offence (whether or not a prosecution for that offence has been instituted)
- any matter connected with the commission of any other offence of which the person is alleged to be a victim, being an offence (whether or not a human trafficking offence) that is alleged to have been committed in the course of, or otherwise in connection with, the commission of the human trafficking offence, or
- without prejudice to the generality of paragraph (a) or (b), the prosecution of the human trafficking offence or of the other offence referred to in paragraph (b).”,

Under this legislation, human trafficking means an offence which is an offence under certain section of the Criminal Law (Human Trafficking) Act 2008 and section 3 of the Child Trafficking and Pornography Act 1998. The legislation came into force in August 2011.

CARE also highlighted the difficulty victims of trafficking in England and Wales have had in accessing compensation and there should be clarity in the Northern Ireland legislation about exactly what rights victims have to the different compensation schemes available such as criminal injuries compensation, employment tribunal, etc.<sup>47</sup>

A number of EU Member states provide for compensation to victims or are in the process of making amendments to legislation to provide for compensation. In Lithuania, the national laws allow a victim to claim compensation if they are held to be a victim of trafficking.<sup>48</sup> In Luxembourg, legislation makes provision for compensation for victims.<sup>49</sup> In Poland, it appears that, in implementing the EU Directive on human trafficking, special focus will be given to compensation for victims of trafficking to ensure access to existing compensation schemes as victims of crime of violent intent.<sup>50</sup> The framework in Portugal provides for compensation to victims, appearing to be as victims of violent crimes.<sup>51</sup> In Slovakia, the issue of compensation to victims was included in the National Programme for Combating Human Trafficking 2008-2010.<sup>52</sup>

Lord Morrow’s proposals on his Private Member’s Bill relate to a number of areas on the treatment of victims in criminal proceedings. It is proposed that clauses 8-12 of the Bill would deal with supporting and assisting the victim into recovery. Lord Morrow proposes that the Department must ensure as soon as there are reasonable grounds to believe that an individual is a victim and there has not been a conclusive determination that the victim is not such a victim, they must be provided with and continue to be provided with assistance and support until three months after criminal proceedings have been completed.<sup>53</sup> Clauses 8 and 9 would cover Articles 11-16 of the EU Directive and deal with General and Legal Support, including:<sup>54</sup>

- Appropriate and safe accommodation;
- Material assistance;
- Medical treatment;

47 Ibid,

48 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Lithuania>

49 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Luxembourg>

50 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Poland>

51 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Portugal#A2>

52 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Slovakia>

53 Clause 8(1) of the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

54 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, pg 17-18. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>, see also Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

- Counselling;
- Information including on reflection and recovery period, the possibility of granting international protection and refugee status;
- Translation and interpretation services;
- Access to education for child victims and children of victims;
- legal counselling either through legal aid or other means, legal representation and assistance in applying for compensation.

Lord Morrow proposes in clause 9 of his Bill that civil legal aid would be available to trafficking victims in three circumstances which reflect changes in the law on England and Wales:

- for an application for leave to enter or remain in the UK;
- a claim under employment law; and
- a claim for damages.

Lord Morrow also proposes that clause 10 of his Bill would require the Department of Justice to set out how a trafficking victim could apply for compensation for instance through compensation orders, an application to the Compensation Agency, civil litigation or before an employment tribunal. The UK Government stated its position on the implementation of the Directive articles in relation to victims in criminal proceedings in its Explanatory Memorandum on the Directive.<sup>55</sup> In relation to Article 11, the UK Government indicates that it would not add requirements beyond what is already provided but could extend the length of time they are required to provide it. The Government's new prime contracting funding model for support for victims of trafficking would enable the prime contractor to assess support needs on a case by case basis. In implementing Article 12, the UK Government suggested that most trafficking victims will be witnesses who are covered by existing arrangements. Victims already receive protection from police, social workers and from volunteers. Support would be provided on an individual needs based on a comprehensive assessment. It was suggested that although the UK was compliant in practice, legislation may need minor amendment. Further detail was not provided on this point. The Government stated that it was made clear during negotiations that they did not think it was appropriate for a victim to have legal representation in a system where they are not party to proceedings. In relation to Article 15, the Government highlighted that the provision of a supporter (representative) for child witnesses is good practice but not enshrined in legislation and legislative change would be required for parts 1-3. However, there would be no operational change because this is covered by practice guidance. Finally, in relation to Article 17, the UK Government indicated that trafficking victims already have access to schemes on compensation.<sup>56</sup>

### 3.4 Definition of Trafficking

Article 2 of the Directive requires Member States to take measures to ensure the following acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation

55 [http://europeanmemorandum.cabinetoffice.gov.uk/memo\\_details.aspx?memoID=4174](http://europeanmemorandum.cabinetoffice.gov.uk/memo_details.aspx?memoID=4174)

56 [http://europeanmemorandum.cabinetoffice.gov.uk/memo\\_details.aspx?memoID=4174](http://europeanmemorandum.cabinetoffice.gov.uk/memo_details.aspx?memoID=4174)

In relation to the lack of an adequate definition which is required under Article 2 (1) of the Directive, one respondent suggests that this is reflected in the discrepancies in terms used in the wider counter-trafficking movement which needs to be addressed.<sup>57</sup> CARE also argue that the requirements of Article 2 (1) and 2 (3) mean that the Asylum and Immigration Act 2004 should be amended so that trafficking definitions should specifically include forced begging and the exploitation of criminal activities.<sup>58</sup>

Lord Morrow proposes to expand the definition of exploitation in the Asylum and Immigration (Treatment of Claimants etc) Act 2004 in clause 3 of his draft Bill to meet the requirements of the Directive. His proposed definition would include:<sup>59</sup>

- force and threats to cover coercion, abduction and fraud and for offences abuse of power to include an abuse of trust relationship;
- defining services that a person might be forced to provide to include forced begging and criminal activities; and
- Defining exploitation to include a third person being given or receiving payments or benefits to achieve the consent of the victim of trafficking.

In other countries, there are discussions about including some of these activities in the definition of trafficking; in some countries, they are already covered. In the Netherlands the provisions in the Criminal Code that specifies that human trafficking is an offence is in line with the internationally agreed description. However, the Directive contains several additional elements including a widening of the definition of exploitation to include forced begging and criminal activities.<sup>60</sup> It would appear that this element of the definition may not be included in existing legislation and a Bill has been introduced including provisions on the definition of trafficking in human beings and extraterritorial jurisdiction.<sup>61</sup> In the Austrian Criminal law provisions, labour exploitation covers forced labour or services. In practice, forced begging is seen as a form of labour exploitation. However, Austria would also like to include the offence “forced begging” in the revised criminal law provisions. Article 2(3) of the Directive specifies that “exploitation” should include “begging”.<sup>62</sup>

In France, the Penal Code covers exploitation for begging. According to art. 225-4-1 of the French Penal Code, human trafficking is the recruitment, transport, transfer, accommodation, or reception of a person in exchange for remuneration or any other benefit or for the promise of remuneration or any other benefit, in order to put him at the disposal of a third party, whether identified or not, so as to permit the commission against that person of offences of procuring, sexual assault or attack, exploitation for begging, or the imposition of living or working conditions inconsistent with human dignity, or to force this person to commit any felony or misdemeanour.<sup>63</sup> In Romania, activity harmful to minors is punished as a crime and this includes forced begging or exploitation for begging.<sup>64</sup>

The UK Government has indicated that the UK is largely compliant with this aspect of the Directive as there are already trafficking offences in legislation. The UK Government

57 Information obtained from a submission ,made by a Respondent, to the Department of Justice Consultation on legislative amendments

58 Information obtained from a submission made by CARE in Northern Ireland to the Department of Justice consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 proposed amendments to comply with EU Directive 2011/36/EU, 31 May 2012

59 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012,pg 10-11. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>, see also Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

60 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Netherlands>

61 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Netherlands#A4>

62 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Austria#A4>

63 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=France>

64 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Romania>

acknowledged that it did not have a trafficking offence which applies to all forms of exploitation of criminal activities but does not propose to widen the existing legislation as the CPS is able to prosecute where activities have led to a person receiving benefits or services.<sup>65</sup>

### 3.5 A Guardian for Child Victims

Article 14 of the Directive requires Member States to appoint a Guardian or a representative for child victims of trafficking where the holders of parental responsibility are, due to conflict of interest between them and the child victim, precluded from ensuring the child's best interest and from representing the child.

It was suggested in a response to the Department's proposals, that a Guardian for child victims is needed and that current arrangements are inadequate as a high proportion of rescued child victims in the UK are found to be re-trafficked.<sup>66</sup> CARE argued that a system of advocates/guardians for trafficked children would ensure at very little cost that the expertise is available to support these vulnerable children through the care system.<sup>67</sup> Lord Morrow proposes to include legal advocates for children - generally referred to in international instruments as a 'guardian' - in clause 11 of his Private Member's Bill.<sup>68</sup> The legal advocate would have the following responsibilities:

- advocate that all decisions are taken in the child's best interests;
- advocate for the child to receive appropriate care, accommodation, medical treatment, including psychological assistance, education, translation and interpretation services;
- advocate for the child's access to legal and other representation where necessary;
- consult with, advise and keep the child informed of legal rights;
- contribute to identification of a plan to safeguard and promote the long term welfare of the child based on an individual assessment of that child's best interests;
- Keep the child informed of all relevant immigration, criminal or compensation proceedings;
- Provide a link between the child and various organisations who may provide services to the child;
- Assist in establishing contact with the child's family, where the child wishes and it is in the child's best interests;
- Attend all police interviews with the child;
- Accompany the child when the child moves to new accommodation.

A number of EU Member States provide for 'Guardians' in their systems. If a child who is a victim of trafficking is in Finland without a guardian or other legal representative, the child will always be appointed a representative immediately. The representative exercises a guardian's right to be heard in matters pertaining to the child's person and assets, decides on the child's living arrangements and manages the child's assets.<sup>69</sup> In Portugal, it has been suggested that the country is on the frontline in implementing the measures in the Directive as the

65 <http://europeanmemorandum.cabinetoffice.gov.uk/files/Miscellaneous%20EMs%2010/PE%20CONS%2069-10.pdf>

66 Information obtained from a submission ,made by a Respondent, to the Department of Justice Consultation on legislative amendments

67 Information obtained from a submission made by CARE in Northern Ireland to the Department of Justice consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 proposed amendments to comply with EU Directive 2011/36/EU, 31 May 2012

68 Proposed Changes in the Law to Tackle Human Trafficking: Consultation Paper, August 2012, pg 19. Available at <http://www.mydup.com/articles.asp?ArticleNewsID=471>, see also Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

69 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Finland>

system provides for special measures for children such as a guardian or representative.<sup>70</sup> The Slovakian system has specific legislation on Social and Legal Protection of Children and on Social Guardianship.<sup>71</sup>

The UK Government has outlined the measures it takes in complying with Article 14. A trafficked child is likely to be a child in need under the Children Act 1989. Under this legislation, an unaccompanied child identified as trafficked will be assessed by the local authority they are referred to as in need of support. Where the child becomes looked after, local authorities must allocate the child a social worker to assess their needs and draw up a care plan. An Independent Reviewing officer must also be appointed with responsibility for chairing reviews of their care plans and ensuring the child understands the plan of their care. A child is also entitled to an advocate who will have a duty to represent the child on any aspect of their care. No measures for further implementation of Article 14 have been suggested by the UK Government.<sup>72</sup>

### 3.6 A National Rapporteur

Article 19 requires states to provide for a National Rapporteur or equivalent mechanism. The tasks set out in the Directive of this mechanism include: carrying out the assessments of trends of trafficking in human beings; measuring the results of anti-trafficking actions, including the gathering of statistics in close co-operation with relevant civil society organisations active in this field and reporting.

In relation to the issue of a National Rapporteur, one respondent to the Department of Justice consultation on legislative amendments suggested that the current arrangement, an inter-departmental ministerial group, is inadequate primarily because it is not independent of government, has not the resources to conduct serious research and does not regularly report. In contrast, the respondent points to the Netherlands which has created an independent office and is successful in the quality of information provided to government.<sup>73</sup> Amnesty International suggested that a Commissioner which is a role with a precedent in Northern Ireland could fulfil the functions of a Rapporteur.<sup>74</sup>

Some countries such as Austria, France, Italy and Ireland have not yet appointed a National Rapporteur.<sup>75</sup> France however is aware of the importance of such a mechanism and planning is underway by an inter-ministerial group. In Ireland, the implementation of the provision concerning the appointment of a National Rapporteur or equivalent mechanism is under consideration.<sup>76</sup>

Other countries have an equivalent mechanism. In Poland, the inter-ministerial Committee for Combating and Preventing Trafficking in Human Beings acts as an equivalent mechanism.<sup>77</sup> In Spain, the delegate of the Minister of Health, Social Services and Equality, Blanca Hernández Oliver, exercises the role of a National Rapporteur or equivalent mechanism.<sup>78</sup>

70 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Portugal>

71 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Slovakia>

72 <http://europeanmemorandum.cabinetoffice.gov.uk/files/Miscellaneous%20EMs%2010/PE%20CONS%2069-10.pdf>

73 Information obtained from submission made by respondents to the Department of Justice Consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004. 30 May 2012, similar issues highlighted submission made by CARE in Northern Ireland to the Department of Justice consultation on Amendment to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 proposed amendments to comply with EU Directive 2011/36/EU, 31 May 2012

74 Amnesty International Response to Department of Justice Consultation on Amendments to the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004, May 2012.

75 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Austria>,

76 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Ireland#A4>

77 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Poland>

78 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Spain>

In the Netherlands, a National Rapporteur was appointed in 2000 and one of the main functions is to analyse trends in the field of human trafficking and to examine Dutch efforts to address the issues. The National Rapporteur is exercised by an independent agency (a National Rapporteur with a team of six people). The National Rapporteur provides the government with an annual report. A report with recommendations is also submitted every other year to the Government and is made publicly available. The Government responds to the recommendations of the National Rapporteur to Parliament.<sup>79</sup>

In the United Kingdom, there is an equivalent mechanism in place in the form of the UKHTC as the central repository for data and the Inter-Ministerial Group for oversight.<sup>80</sup> The UK Government stated it hopes to implement this article of the Directive without recourse to legislation but this would require more work to confirm. The reason given is that this Article is outside the usual provision of a Directive which usually confers rights on individuals.<sup>81</sup>

The Justice Minister highlighted in the second stage debate of the Criminal Justice Bill that he was aware of the concerns around the current arrangements but that the Home Office are determined that the inter-ministerial group is appropriate to carry the national rapporteur arrangements.<sup>82</sup>

### 3.7 Making it an offence to Pay for Sexual Services

The issue of paying for sexual services is not dealt with in the EU Directive nor in the Department for Justice's clauses in the Criminal Justice Bill. However, one response to the Department's proposals for legislative amendments noted that as Minister for Justice in the Republic of Ireland is preparing to review legislation in the area, there is considerable pressure for the introduction of measures to criminalise the purchase of sexual services. It was suggested that there is a need to maintain dialogue on human trafficking on an all island basis.<sup>83</sup> QUB Organised Crime Project indicated in its response to the Department's legislative proposals that it is neutral to the legal status of voluntary prostitution itself in Northern Ireland and the United Kingdom.<sup>84</sup>

Lord Morrow has included proposals for clauses in his Private Member's Bill to make paying for sexual services illegal in Northern Ireland (Clause 4 of his Bill). Lord Morrow notes that under the Sexual Offences (Northern Ireland) Order it is illegal to buy sex from someone in Northern Ireland if they are coerced. However according to Lord Morrow, this presents real challenges as it requires proof of coercion which is difficult to obtain. Lord Morrow draws attention to the Swedish model which makes the purchase of sex an offence.<sup>85</sup>

A study for the European Parliament in 2005 indicated that EU states had different policies on prostitution: some prohibited it entirely, some permitted it but prohibited brothels or profiting from someone else's prostitution, while others regulated prostitution.<sup>86</sup>

79 <http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Netherlands#A2>

80 <http://europeanmemorandum.cabinetoffice.gov.uk/files/Miscellaneous%20EMs%2010/PE%20CONS%2069-10.pdf>

81 <http://europeanmemorandum.cabinetoffice.gov.uk/files/Miscellaneous%20EMs%2010/PE%20CONS%2069-10.pdf>

82 Official Report of the Northern Ireland Assembly, Second Stage Debate of the Criminal Justice Bill, 3 July 2012

83 Consultation on legislative amendment and Department of Justice engagement in relation to Human Trafficking: Response from the Northern Ireland Catholic Council on Social Affairs, June 2012,

84 QUB School of Law Organised Crime Project Submission to the Amendment to The Sexual Offences Act 2003 and the Asylum and Immigration Act 2004, May 2012, see footnote 12 of submission.

85 Proposed Changes in the Law to Tackle Human Trafficking: A Consultation Paper, August 2012, available at <http://www.mydup.com/articles.asp?ArticleNewsID=4717>, see also Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill

86 Study on National Legislation on Prostitution and the Trafficking of women and Children, A Report by Transcribe for the European Parliament, available at <http://ec.europa.eu/anti-trafficking/entity.action?id=0f8bafc9-bfc0-441b-b33e-dbe7996da145>.



Sweden has enacted legislation to prohibit the offering of sexual services in order to reduce demand for sexual services and prevent trafficking for sexual exploitation and includes penalties of a fine or six months term of imprisonment (Chapter 6, ss 9 and 11 of the Criminal Code).<sup>87</sup> In France on 6 December 2011, the National Assembly adopted a resolution reaffirming the abolitionist position of France with regards to prostitution and directly referring to Directive 2011/36. According to this resolution, the National Assembly considers the fight against human trafficking as a priority, the prostituted persons being in their large majority victims of sexual exploitation.<sup>88</sup> According to a study for the European Parliament in 2005, a country falls under the Abolitionism model if outdoor and indoor prostitution are not prohibited. The State decides to tolerate prostitution. Prostitution by adults is not subject to punishment, but profiting from another person's prostitution is criminalised. The New Abolitionism Model develops this further – indoor and outdoor prostitution are not prohibited however with reference to indoor prostitution, the State intervenes to prohibit the existence of brothels.<sup>89</sup>

A Private Member's Bill has been proposed in Scotland by Rhoda Grant MSP to criminalise the purchase of sex in Scotland.<sup>90</sup> It is intended that the proposal would make the purchase of sex illegal in Scotland with the aim of reducing demand for prostitution. In addition to strengthening the existing legislative framework against purchasers, Scotland would become an unattractive market for prostitution and other associated criminal activities such as trafficking for sexual exploitation.<sup>91</sup>

In the Netherlands, the Government introduced a new Act in 2010 on legalised prostitution which requires every sex business in be licensed and every prostitute to be registered.<sup>92</sup>

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87 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Sweden>

88 <http://www.lexisnexis.com/EUTRACKER/greymatter.aspx?celex=32011L0036&country=France>

89 Study on National Legislation on Prostitution and the Trafficking of women and Children, A Report by Transcrime for the European Parliament, available at <http://ec.europa.eu/anti-trafficking/entity.action?id=0f8bafc9-bfc0-441b-b33e-dbe7996da145>, p 15.

90 This proposal was lodged on 23 May 2012, see <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/51148.aspx>

91 See Rhoda Grant, MSP, Statement of Reasons why consultation is unnecessary, 23 May 2012, available at [http://www.scottish.parliament.uk/S4\\_MembersBills/20120523\\_SofReasons\\_Criminalisation\\_of\\_Purchase\\_of\\_Sex.pdf](http://www.scottish.parliament.uk/S4_MembersBills/20120523_SofReasons_Criminalisation_of_Purchase_of_Sex.pdf)

92 <http://www.lexisnexis.com/eutracker/greymatter.aspx?celex=32011L0036&country=Netherlands>



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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Paper 000/00

1st October 2012

NIAR 703-12

**Fiona O'Connell**

# Supplementary Briefing on Human Trafficking

## 1 Introduction

This research paper has been produced in response to a question following a previous presentation on human trafficking. During that earlier presentation, a question was asked as to whether there is evidence that stringent legislation reduces incidences of trafficking. There is little literature on this; therefore it is not possible to confirm whether stringent legislation reduces the incidence of human trafficking or not. Some literature from the United States indicates that the reduction in the number of trafficked people in the US could be due to the legislation or possibly reflects the unreliability of statistics. Evidence from the US also suggests that low numbers of prosecutions could undermine harsh sentences. There are contested views on the success of the prohibition of paying for sexual services in Sweden. Some of the literature suggests that to tackle the problem of trafficking a holistic approach is required.

## 2 Does stringent legislation reduce occurrence in human trafficking?

There is insufficient literature on the subject to confirm whether or not stringent legislation reduces incidences of human trafficking. One commentator offers the following general observations:

*“...One generally accepted point is that an offender’s perception of the likelihood of punishment serves as a tangible deterrent. If an offender perceives a sufficiently real possibility that he will be arrested and convicted of a crime (and the punishment is sufficiently severe), he is less likely to commit that crime.”<sup>1</sup>*

Consideration was given in the United States as to whether the law on trafficking deters crime. The Victims of Trafficking and Violence and Protection Act of 2000 (TVPA) established a coordinated transnational effort to protect trafficked victims. The Act contained stringent penalties on a par with other serious crimes such as rape punishable with a sentence of twenty years to life. A report in 2007 on the impact of the legislation suggested that the TVPA had resulted in small but important increases in arrest and convictions of traffickers both in the United States and in some countries abroad. The report indicated that between 20,000 and 50,000 people were trafficked into the United States,<sup>2</sup> however more recently the number of victims trafficked into the United States every year was given as 17,500. The report concluded that the smaller number of trafficked victims in the United States could be due to the positive impact of the TVPA to deter the crime or “simply due to the unreliability of statistics in this very secretive and shameful international business of buying and selling human cargo.”<sup>3</sup> Other research indicates that despite harsher penalties in the United States, the chance of being prosecuted is still quite low, undermining the deterrent value of the harsher sentences.<sup>4</sup>

There has been some discussion on the Swedish decision to prohibit paying for sexual services and the impact of this on trafficking. There has been debate around the success of the model in Sweden. An evaluation on the ban in 2010 submitted to the Swedish Parliament looked into the effects the prohibition had on the prevalence of prostitution and human trafficking for the purposes of sexual exploitation.<sup>5</sup> The evaluation highlighted a number of positive outcomes including:<sup>6</sup>

- Street prostitution in Sweden has been halved and this reduction may be considered to be a direct result of the criminalisation of sex purchases;
- The prevalence of street prostitution before the ban was the same in Norway, Denmark and Sweden, subsequently however, the prevalence in Denmark and Norway increased dramatically;
- The ban has not led to street prostitution in Sweden shifting to the internet;
- The ban on the purchase for the payment of sexual services has acted as a barrier to human traffickers and procurers considering establishing themselves in Sweden;

1 Siddharth Kara “Designing More Effective Laws Against Human Trafficking” *Northwestern Journal of International Human Rights*, Vol 9, Number 2 (Spring 2011), 130

2 SW Tiefenbrun “Updating the Domestic and International Impact of the US Victims of Trafficking Protection Act 2000: Does Law Deter Crime?” *38 Case Western Reserve Journal of International Law* 249 (2007), 11.

3 SW Tiefenbrun “Updating the Domestic and International Impact of the US Victims of Trafficking Protection Act 2000: Does Law Deter Crime?” *38 Case Western Reserve Journal of International Law* 249 (2007), 23.

4 Chacon, Jennifer “Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking” (2006) *74 Fordham Law Review* 2977

5 <http://www.sweden.gov.se/content/1/c6/14/92/31/96b1e019.pdf>

6 <http://www.sweden.gov.se/content/1/c6/14/92/31/96b1e019.pdf>

- In three surveys conducted since the ban was introduced, more than 70% took a positive view of the ban.

However there are contested views as to whether the ban has been as successful as the above report suggested. One commentator calls the legislation “a failed experiment in social engineering;” the commentator suggests that close examination of government reports and other research reveals that Sweden’s claims of success are not supported by reliable evidence.<sup>7</sup> Other literature comments that critics argue that more than two thirds of prostitutes have simply begun working indoors at home, in a brothel, in a club or as escorts.<sup>8</sup> One academic commentator in Northern Ireland suggests that evidence from Sweden is patchy at best and all that the prohibition seems to have done is displace prostitution to Norway and Denmark and made it more invisible via the internet.<sup>9</sup>

### 3 Beyond Criminal Justice Responses?

Research indicates that whilst stringent criminal justice responses can deter traffickers, a more holistic approach is required. For example, a commentator on the US model highlights that much work reflects the emphasis on prosecution, however in the long-term prevention is likely to be a much more effective way to avert the exploitation of vulnerable women, men, boys and girls than “seeking to identify and extract victims from their clandestine circumstances once their trafficking experience is underway”.<sup>10</sup> There has been criticism of the model in Spain (although it should be noted this was written prior the publication of the EU Directive): it was argued that although Spain had punitive measures, there was no evidence of their effectiveness and that the Spanish model had not been supported by any policies to support and integrate the victims of trafficking.<sup>11</sup> More generally, a human rights academic suggests that, while trafficking of victims is undoubtedly a criminal justice issue, a more holistic human rights based approach to trafficking is required which also focuses on protection.<sup>12</sup> A more holistic approach would involve the establishment of independent national human rights commissions with the appointment of a National Rapporteur on Trafficking within these commissions. Other suggestions include the involvement of NGOs in educating the public about trafficking. In promoting a holistic human rights framework, the inclusion of potential victims is essential in order to address the root causes of trafficking.<sup>13</sup>

7 A Jordan “The Swedish Law to Criminalise Clients: A Failed Experiment in Social Engineering” Center for Human Rights & Humanitarian Law, Issue Paper 4, April 2012

8 W Shinkle “Preventing Human Trafficking: An Evaluation of Current Efforts” Institute for the Study of International Migration. Walsh School of Foreign Service, Georgetown University.

9 Belfast Telegraph “Police have enough powers on sex trade” Tuesday 11 September, 2012.

10 W Shinkle “Preventing Human Trafficking: An Evaluation of Current Efforts” Institute for the Study of International Migration. Walsh School of Foreign Service, Georgetown University.

11 FJ de Leon “Spanish Legislation against trafficking in human beings: punitive measures and poor victims assistance” *Crime, Law and Social Change* (2010) 54: 381-409

12 T Obokata (2006) “Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach”, *International Studies in Human Rights*, Martins Nijhoff Publisher, 173-176

13 T Obokata (2006) “Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach”, *International Studies in Human Rights*, Martins Nijhoff Publishers 173-176



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Appendix 5

# Memoranda and correspondence from the Department of Justice



## Contents

19 June 2012	Briefing paper on bill principles
3 July 2012	Response to Delegated Powers Memorandum
25 July 2012	EU Directive on Human Trafficking
5 September 2012	Human Trafficking update
12 September 2012	Publication of report by the Council of Europe's Group of Experts on Action Against Trafficking in Human Beings (GRETA)
12 September 2012	Organised Crime Task Force Immigration and Human Trafficking Subgroup
19 September 2012	Draft guidance on working arrangements for the welfare and protection of adult victims of human trafficking
29 September 2012	Proposed amendment to repeal the common law offence of scandalising the court
3 October 2012	Legal aid impact
5 October 2012	Consultation on provisions on human trafficking and engagement with non-governmental organisations (NGO's)
5 October 2012	Proposed amendment – use of registered intermediaries
10 October 2012	Comparison of retention regimes
10 October 2012	Lord Morrow MLA's private members bill on human trafficking
1 November 2012	Response to written submissions and additional information
7 November 2012	Proposed Amendment – Registered Intermediaries Schemes
8 November 2012	Proposed amendment to repeal the common law offence of scandalising the court
15 November 2012	Miscellaneous Provision on Statutory Prohibitions on holding Firearms
21 November 2012	Response on human trafficking issues raised
22 November 2012	Response from the Department of Health, Social Services and Public Safety to health related issues on human trafficking
27 November 2012	Ministerial Amendment to the Biometric Retention Framework
30 November 2012	Ministerial Amendments to the Sexual Offender Notification Provisions
6 December 2012	Draft Clauses amending detention provisions
6 December 2012	Human Trafficking Amendments

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
Fax: 028 90528597  
Teletext: 028 90527668  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1055/2012

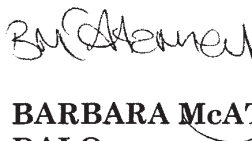
Ms Christine Darrah  
Clerk to the Justice Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Ballymiscaw  
Belfast  
BT4 3XX

19 June 2012

Dear Christine

**CRIMINAL JUSTICE BILL: BRIEFING ON BILL PRINCIPLES**

I attach, for the Committee's information, a paper on the principles of the Criminal Justice Bill, in advance of an oral briefing from officials scheduled for Thursday 28 June.



**BARBARA McATAMNEY  
DALO**

ENC



## CRIMINAL JUSTICE BILL

- Business Areas:** Access to Justice Directorate  
Safer Communities Directorate
- Issue:** Briefing on the Principles of the Bill is scheduled for oral evidence on 28 June.
- Restrictions:** None.
- Action Required:** That the Committee notes the principles of the Criminal Justice Bill
- Officials Attending:** David Hughes, Head of Policing (Policy & Strategy) Division  
Amanda Patterson, Criminal Policy Branch  
Marie Patterson, Organised Crime Branch  
Ian Kerr, Police Powers and Custody Branch

Subject to the Speaker's agreement, the Criminal Justice Bill will be introduced to the Assembly by the Minister of Justice on Monday 25 June. Its Second Stage is scheduled for 3 July. The Bill is necessary to remedy incompatibilities with Convention rights identified by the European Court of Human Rights (ECtHR) and the Supreme Court, and to comply with the EU Directive on human trafficking.

### Aims

2. The Bill has three discrete strands. It includes measures to—
  - provide for a review mechanism for periods of indefinite sex offender notification as required by the Supreme Court ruling; and also make other additional adjustments to the law on notification to increase public safety;
  - introduce new offences for Northern Ireland to comply with the EU Directive on preventing and combating trafficking in human beings and protecting its victims. The Directive builds on existing international instruments designed to combat

human trafficking, and will make it an offence to traffic people for sexual or other exploitation; and

- replace existing provisions which allow for indefinite retention of fingerprints and DNA samples and profiles from anyone arrested for a recordable offence, whether convicted or not, with a new legislative framework which complies with Article 8 (right to privacy) of the ECHR.

#### Sex offender notification

3. The proposals seek to address the Supreme Court judgement of incompatibility with Article 8 (right to privacy and family life) of the ECHR in *R(F) and Thompson v Secretary of State for the Home Department [2010] UKSC 17* by introducing a review mechanism to allow offenders who are subject to an indefinite period of notification under the Sexual Offences Act 2003 to apply to have the requirements lifted.

4. The Bill also makes a necessary amendment to the 2003 Act concerning removal of notification in respect of abolished sexual offences as a result of earlier changes to the law introduced by the Sexual Offences (NI) Order 2008. Other proposals, which aim to make notification more effective in preventing crime, arise as a result of changes to the law in other jurisdictions of the UK; and as a response to PSNI concerns about how the law operates in Northern Ireland, particularly as the only UK jurisdiction with a land border.

#### Human Trafficking

5. The Westminster Government decided, in July 2011, to opt in to the European Commission's Directive on Human Trafficking, which details how Member States must act to prevent and combat trafficking in human beings and protect victims.

6. To comply with the criminal aspects of the Directive there are a number of changes that the Westminster and devolved governments need to make to legislation. Some of these can only be made through primary legislation. These fall within the competence of the Northern Ireland Assembly. The deadline for implementation of the changes across the United Kingdom is 6 April 2013. To meet this timescale, the changes to Northern Ireland legislation need to be taken forward in this Criminal Justice Bill.

7. The Justice Committee was advised, earlier this year, of the requirement to legislate and of the Department's intention to consult on the proposals. This part of the consultation, launched on 5 April 2012, finished on 31 May. No negative comments were received. The Committee received a paper on responses to the consultation in advance of its meeting on 21 June.

#### DNA and Fingerprints

8. Since 2001, the law in Northern Ireland has allowed the police to retain indefinitely the DNA sample, DNA profile and fingerprints obtained from persons arrested for a recordable offence regardless of whether or not it results in a conviction. On 4 December 2008, the ECtHR found in the case of *S & Marper v UK* that the relevant legislation in England, Wales and Northern Ireland was in breach of Article 8 of the ECHR.

9. The proposals in the Bill introduce a new framework, designed to be Article 8 compatible, for the retention, use and destruction of DNA and fingerprints. They differentiate between those who are convicted and those who are not; between minor and serious offences, and between adult and juvenile offenders.

10. A more detailed description of the Bill's provisions is attached at Annex A, and an account of how – and why – policy may have changed since the Committee was last briefed on these matters is at Annex B.

**Department of Justice**

20 June 2012

## ANNEX A

### CRIMINAL JUSTICE BILL: OVERVIEW

#### Sex Offenders: Clauses 1 to 4 and Schedule 1

1. The aim of the provisions is to adjust the law in relation to sex offender notification requirements in a number of ways. Firstly, to address a ruling of the Supreme Court which found that it is incompatible with Convention rights for the law to attach notification requirements to an offender for an indefinite period with no prospect of review. A review system is being proposed which would allow offenders to apply for a review 15 years after release from prison. A similar adjustment to the law is being made throughout the UK. The Bill will also update the law to remove notification requirements from offences which have been abolished.

2. Secondly, the Bill will strengthen the law on notification requirements to make it a statutory requirement for offenders with convictions for sexual offences from certain states outside the UK to notify if they come to Northern Ireland. A further measure will see sexual offences prevention orders strengthened to contain positive conditions as well as prohibitions.

#### Trafficking people for exploitation: Clauses 5 & 6

3. Changes to existing primary legislation are required to ensure compliance with the criminal aspects of the EU Directive on Human Trafficking. The changes, which create two new offences, will strengthen the overall response to trafficking and prosecution of offenders.

4. The changes will:

- create an offence where a person is trafficked outside the United Kingdom for sexual exploitation. The offence will deal with the abuse of trafficked victims at all stages of their journey or ongoing travel, and may be committed by British citizens, habitual residents of Northern Ireland and bodies incorporated under the law of a part of the United Kingdom; and

- create a similar offence to allow for the prosecution of a person who has trafficked someone anywhere outside the UK for labour or other exploitation.

**Retention of fingerprints, DNA profiles, etc.: Clause 7 and Schedules 2 & 3**

5. The Bill inserts into the Police and Criminal Evidence (Northern Ireland) Order 1989 the new retention framework for fingerprints and DNA samples and profiles, and makes consequential amendments. The key proposals are as follows.

Non-convicted persons

Immediate destruction of fingerprints and DNA profile from persons—

- arrested for or charged with, but not convicted of, a minor offence; or
- arrested for, but not charged with, a serious offence (unless prescribed circumstances apply).

Retention of fingerprints and DNA profile from persons—

- arrested for, but not charged with, a serious offence (if prescribed circumstances apply); or
- charged with, but not convicted of, a serious offence,

for a period of three years, with an extension of two years available on application to the courts.

Convicted adults

Indefinite retention of fingerprints and DNA profiles for all adults convicted of a recordable offence

Convicted under-18s

On first conviction for a minor offence, retention of fingerprints and DNA profiles for—

- five years, if the sentence is non-custodial; or
- five years plus length of sentence (if given a custodial sentence of less than five years).

Indefinite retention of fingerprints and DNA profiles—

- where a custodial sentence of five years or more is imposed;
- on conviction for a serious offence; or
- on a second conviction.

DNA samples

Destruction of all DNA samples taken from persons on arrest, whether the individual goes on to be convicted or not. Samples to be retained for only as long as necessary

to create a DNA profile and, in any event, for no longer than six months, with an exception for temporary retention where the sample is likely to be needed in proceedings.

Statutory grounds for early deletion

Statutory requirement for Chief Constable to destroy fingerprints and DNA in cases where the taking of the samples was unlawful or the arrest of the person was unlawful or based on mistaken identity, with an exception for temporary retention where the material has evidential value, subject to its admittance by a court.

Searches

Relevant databases to be searched for a match against all fingerprints and DNA before destruction.

Biometric Commissioner

Cases involving prescribed circumstances to require independent approval. As drafted, application is made to the Biometric Commissioner, but that function may go instead to the courts, subject to consultation with interested parties.

**ANNEX B****ADJUSTMENTS TO THE CRIMINAL JUSTICE BILL**

1. Whilst the human trafficking provisions are new to the Bill, the policy has not changed since the Committee received a briefing on the issue earlier this year. However, the Committee will wish to note a number of changes to the sex offender and DNA/fingerprints policy provisions which were presented to the Committee in November 2011 and September 2011 respectively. These have arisen from late amendments to the Protection of Freedoms Act 2012 which we agreed should be replicated for Northern Ireland; and from discussions and correspondence with political parties and the Office of the Attorney General for Northern Ireland since publication of the draft Executive Paper in November 2011.

**Sex offender notification**Review of indefinite notification

2. Paragraph seven of Schedule 1 introduces a new provision to require the Department to issue guidance on the making and determination of applications for review of indefinite notification. This provision has been introduced to respond to a concern raised by the Attorney in relation to the possible breach of Convention rights if offenders with mental incapacity issues are required to make application themselves. The guidance will allow for administrative solutions to this issue to be given an element of statutory backing. It will also allow for general guidance to the police on the determination of applications, similar to what has been proposed for England and Wales.

Offenders with convictions from outside the UK

3. The Attorney also raised concerns about the Convention compatibility of the proposed adjustment to the process for attaching notification to offenders who come to Northern Ireland with convictions for sexual offences from jurisdictions outside the UK. The original proposal was to attach notification to all such offenders on the basis of the statute rather than, as present, as the result of a court order. The Attorney was

concerned that the Bill would not be compatible with Convention rights and therefore not within the competence of the Assembly if such a requirement were included. As a result, the new provision was limited to only offenders with convictions from EEA states. The remainder would still be subject to notification through the court order process, as at present. The purpose behind this safeguard was to protect against the automatic attachment of the requirements, with the associated criminal penalty if the requirement is breached, those persons with a sexual offence conviction from a country with a poor human rights record and suspect judicial practices. The example provided by the Attorney was that of an Iranian asylum seeker. The Bill retains this amending provision, but Executive approval to introduce was based on an agreement that further discussions are held with the Attorney, and with the Justice Committee, during the passage of the Bill, and that an amendment to the Bill would be brought forward to allow for a single enhanced process for attaching notification.

#### **DNA/Fingerprints**

4. In cases where an individual has been charged with, but not convicted of, a qualifying offence, the police may retain their DNA and fingerprints for three years only, with a possible single extension of a further two years on application to the courts. Where an individual has been arrested for, but not charged with or convicted of, a qualifying offence, in certain limited prescribed circumstances the police may apply for retention of the material for the same period, subject to the approval of a Biometric Commissioner – an office to be established under the Bill. However, the Department is exploring the merits of giving this function, too, to the courts, and will bring forward an amendment if that is subsequently agreed with the various interested parties.

5. The original proposal to destroy all DNA samples once a profile had been generated or after six months has been modified, mirroring a late amendment to the Protection of Freedoms Act 2012. The changes were made following representations from the Crown Prosecution Service that, in a limited number of cases each year, it would be necessary to retain individual samples in order to deal with any subsequent challenge by the defence to the comparison made between the DNA of the individual and that found at the crime scene. Prosecutors were concerned that, unless samples were retained in these cases, they might be unable to withstand such a challenge and



acquittals on technical grounds might result. The PPSNI and FSNI have been consulted and agree that there would be merit in replicating this provision for Northern Ireland.

6. Material taken unlawfully or on the basis of mistaken identity was to have been required to be destroyed as soon as it had been subjected to a search against the databases. On the suggestion of the Attorney, the Bill now provides that, if such material has potential evidential value, it may be retained for the duration of the associated investigation or proceedings, and the circumstances of its taking considered by the court as part of its decision on the admissibility of evidence.

7. Again at the suggestion of the Attorney, the Bill now accommodates cases where biometric material from one individual may be probative against another – for example, where a co-accused has said that he was with the person to whom the biometric material relates at the relevant time, and the biometric evidence is subsequently linked to the crime scene.

8. Finally, we have removed the requirement to destroy impressions of footwear. As the Attorney observed, it is not at all clear that Article 8 rights are engaged in respect of footwear impressions, and the Marper judgment appears to impose no obligation in that regard.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90528121  
Fax: 028 90528597  
Teletext: 028 90527668  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
BELFAST  
BT4 3XX

13 July 2012

Dear Christine,

**DELEGATED POWERS MEMORANDUM – CRIMINAL JUSTICE BILL 2012**

Please find attached a copy of the Delegated Powers Memorandum as prepared by the Department to assist the Justice Committee in their considerations of the Criminal Justice Bill.

The document identifies the provisions of the Bill which confer powers to make delegated legislation; and explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.

I trust the Committee finds this useful. We would be happy to provide any further information or advice as required.

  
Barbara McAtamney  
DALO

Enc.

**Building a fair, just and safer community**

## DELEGATED POWERS MEMORANDUM

### CRIMINAL JUSTICE BILL 2012

#### INTRODUCTION

1. The Criminal Justice Bill has three main elements – it amends the law on sex offender notification and increases the scope of sexual offences prevention orders; it creates new human trafficking offences; and it introduces a new retention framework for DNA and fingerprints taken from persons in connection with the investigation of an offence.

2. The Bill amends previous legislation and creates new freestanding provisions. This memorandum considers each delegated power in the sequence of the Bill.

3. In overview, the Bill contains the following provisions for delegated legislation:

Clause 7 requires the Department to prescribe, by order, such transitional or saving provisions it considers appropriate in connection with the coming into operation of the DNA and fingerprints retention provisions, and in particular provide for the destruction or retention of material taken before the commencement of the new provisions.

Clause 9 confers on the Department commencement powers.

Schedule 1 requires the Department to issue guidance on the making, and determination by the Chief Constable, of applications for initial and further review for discharge of indefinite notification requirements.

Schedule 2 requires the Department to prescribe, by order, the circumstances in which biometric material from a person arrested for, but not charged with, a serious offence may be retained for a limited period.

4 The Justice Committee will be consulted on the detailed policy content of all future subordinate legislation.

## **DELEGATED PROVISIONS**

### **CLAUSE 7: RETENTION OF FINGERPRINTS, DNA PROFILES ETC**

#### **Purpose of delegated legislation**

5. Clause 7 of the Bill gives effect to Schedules 2 and 3 to the Bill which make provision for a new regime for the retention and destruction of fingerprints and DNA samples and profiles taken from persons under powers within the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE).

6. Clause 7(3) and (4) requires the Department to make an order making transitional, transitory or saving provisions in connection with the coming into force of the new retention framework. In particular, the order must make specific provision to apply the framework to existing fingerprints, samples and DNA profiles obtained before the coming into force of the new framework.

#### **Reason for delegated legislation**

7. The Department considers that it is appropriate for the destruction of biometric material to be set out in secondary legislation because a large amount of material relating to unconvicted people is currently retained and sufficient time needs to be allowed for the exercise of identifying and destroying this material in appropriate cases. The order-making power will allow the Department to set a realistic deadline for that destruction date, without unduly delaying the implementation of the new retention and destruction regime in relation to material taken after the coming into force of these provisions.

#### **Assembly control**

8. Under Clause 7(5) the order is to be subject to the negative resolution procedure. The Department considers that this will allow sufficient and appropriate scrutiny and is consistent with other orders and regulations made under PACE.

## **CLAUSE 9: COMMENCEMENT AND TRANSITIONAL ETC PROVISIONS**

### **Purpose of delegated legislation**

9. The power in Clause 9(2) and (3) enables certain provisions of the Bill to be brought into operation by Commencement Order made by the Department.

### **Reason for delegated legislation**

10. The delegated power has been provided to enable provisions of the Bill to be brought into force as appropriate on a date or dates determined by the Department.

### **Assembly control**

11. As is usual with commencement orders, the power is not subject to any Assembly procedure.

## **SCHEDULE 1: SCHEDULE 3A TO THE SEXUAL OFFENCES ACT 2003, AS INSERTED**

### **Purpose of delegated legislation**

12. Schedule 3A provides that sex offenders required to notify for an indefinite period (ie those who are sentenced to more than 30 months imprisonment) should be given an opportunity, after 15 years in the community, to apply to the police for a review of the indefinite nature of the requirements. If the review is successful, the notification requirements will be discharged. Paragraph 7 of Schedule 3A requires the Department to issue guidance on the making of applications for initial and further reviews of indefinite notification requirements and for the determination by the Chief Constable of such applications.

### **Reason for delegated legislation**

13. The guidance will be provided to assist police and relevant parties in the understanding and application of the new legislation as prescribed within the proposed Schedule 3A to the Sexual Offences Act 2003 (Review of indefinite notification requirements). The guidance will offer a framework for the consistent treatment of applications and to deal with circumstances which may arise outside of the normal process.

### **Assembly control**

14. The power is not subject to any Assembly procedure. However, the guidance will be shared in draft with the Justice Committee before publication.

## **SCHEDULE 2: ARTICLES 63B TO 63O OF THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989 (AS INSERTED)**

### **Purpose of delegated legislation**

15. Schedule 2 inserts a new Article 63D which deals with the retention of DNA and fingerprints in the case of a person arrested for or charged with, but not convicted of, a qualifying (serious violent or sexual) offence. Article 63D provides for three scenarios. First, where such a person has a previous conviction for a recordable offence (which is not an excluded offence) his or her DNA profile and fingerprints may be retained indefinitely. Second, where a person is charged with, but not convicted of, a qualifying offence and has no such previous conviction, his or her DNA profile and fingerprints may be retained for a period of three years, with a possible further two years' retention available on application to a court. Third, where a person is arrested for, but not charged with, a qualifying offence his or her DNA profile and fingerprints may be retained for the same period where prescribed circumstances apply.

16. Article 63D(5)(c) contains a delegated power to allow the Department, by order, to prescribe the circumstances in which police may apply to an independent authority for consent for the retention of material. Article 63D(13) provides that the order may make provision about the procedure to be followed in relation to any such application.

### **Reason for delegated legislation**

17. Article 63D provides that, in cases where a conviction has not been obtained, the default threshold for limited retention should be charge rather than arrest. However, if the police believe there are sufficient public protection grounds to justify the retention of material following an arrest for a qualifying offence that does not lead to a charge – for example, where the victim is a child or vulnerable adult – the Bill allows them to apply to an independent authority for approval.

18. Whilst it would be possible to set out the prescribed circumstances on the face of the Bill, the Department is conscious that the precise framing of the circumstances may need to be revised in the light of experience of operating the new retention framework, the changing nature of crime and the public protection issues to which such changes may give rise. The Department considers the flexibility afforded by delegated legislation better suited to such revision. The mechanism for application will be procedural in nature and can properly be left to delegated legislation.

**Assembly control**

19. The order is subject to the negative resolution procedure by virtue of the amendment made to Article 89 of PACE by paragraph 5 of Schedule 3 to the Bill. The Department considers that this will provide sufficient and appropriate Assembly control should there be a need to add to or amend the range of prescribed circumstances.

**Department of Justice**

**July 2012**

FROM THE OFFICE OF THE JUSTICE MINISTER



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**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
Fax: 028 90528597  
Teletext: 028 90527668  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1246/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Parliament Buildings  
Stormont  
Ballymiscaw  
Belfast, BT4 3XX

25 July 2012

Dear Christine

**EU DIRECTIVE ON HUMAN TRAFFICKING – CRIMINAL JUSTICE BILL**

Thank you for your letter of 3 July asking for further information on the Department's handling of the issues raised by respondents to the consultation exercise on the new offences to meet the EU Directive. The letter also enquires whether these will be taken forward in the next Justice Bill.

The Committee Chair wrote to the Minister of Justice on 10 July advising that the Committee wishes to see the strongest possible legislation introduced in Northern Ireland in relation to human trafficking and will consider the matter further in the course of its scrutiny of the Criminal Justice Bill.

The Minister has asked me to reply to the letters and to welcome the support from the Committee on this important work.



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The background is that the consultation document was published by the Department on 5 April. It noted that to achieve compliance with the EU Directive on Trafficking in Human Beings, there are a number of changes which need to be made to legislation and guidance and that some of these could only be made through primary legislation, hence the need for inclusion of these amendments in the Criminal Justice Bill. The consultation closed on 31 May. The Bill, which includes two clauses relating to the human trafficking offences, was introduced on 25 June 2012. A related consultation exercise on engagement with Non Governmental Organisations (NGOs), a feature of the EU Directive, closed on 28 June.

The Minister noted during the debate on the Second Stage of the Bill on 3 July, that suggestions for further legislative change had been put to him by Lord Morrow and, separately, by others in response to the recent consultation on the EU Directive and that he would consider those in detail. He advised the Assembly that the priority is to make provision for the amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to ensure that the law in Northern Ireland complies with the criminal aspects of the EU Directive and that the Assembly meets the deadline for its implementation in April 2013.

In response to comments made by a number of Members during the debate, the Minister advised the Assembly that if it was possible to find ways of strengthening the Bill, in line with the remarks made by Members, while still complying with the overall principles of the Bill as introduced, he would be prepared to look at them (obviously it may be that the work required to consider and develop an area may point to later legislation). He also noted that not every change would require legislation. It is also relevant to note that some of the changes being sought are not necessary, for instance, because a power already exists.

DOJ officials are now analysing the responses to the consultation exercises and are drawing up a summary of responses to both, which will also set out proposals on the

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way forward. The paper will, of course, be sent to the Committee before it is published.

In addition, DOJ officials, in conjunction with stakeholders, are carrying out a critique of Northern Ireland's compliance with the EU Directive which should assist the Justice Committee. This will encompass consideration of the need for further legislative change.

The Committee will know that the Minister's primary objectives in relation to human trafficking are to support victims, bring the traffickers before the courts and raise awareness of this issue. A raft of work has already been carried out, and is ongoing, across a number of organisations and areas. The Minister has asked me to set this out for the Committee; it is included in the attached annex.

Finally, the Committee has asked for an oral briefing on human trafficking from the OCTF Subgroup on Immigration and Human Trafficking for 13 or 20 September. I can confirm this is now arranged for 20 September.

**BARBARA McATAMNEY**  
**DALO**

**ENC**

**Annex****Initiatives on Human Trafficking****The PSNI**

The PSNI's Organised Crime Branch conducts investigations to tackle the crime gangs involved in human trafficking, whether they are local, national or international. This work can involve liaison with, for instance, the UK Border Agency and Serious and Organised Crime Agency. A number of human trafficking investigations are ongoing and whilst the investigative objective is to frustrate, disrupt or dismantle the crime gang involved, the primary objective remains victim recovery and ensuring that appropriate support services are available to the victims upon recovery.

Within the Financial Year ending March 2012, 33 potential victims of human trafficking were recovered in Northern Ireland. This is an increase from 23 in the previous year. The majority of victims recovered were females who were being exploited sexually, primarily within prostitution.

The PSNI has recently developed and introduced of an online training package, targeted at frontline officers and staff to assist in the recognition of signs of trafficking. Over 2000 PSNI officers and staff have successfully completed the training. In addition, the PSNI's Organised Crime Branch has introduced and delivered bespoke training to a number of detectives to enhance their investigative skills and ensure that officers know how to engage voluntary and statutory partners in assisting rescued victims.

The PSNI and An Garda Síochána have developed effective working relationships and the ability to share information within existing protocols. They also regularly undertake joint training in human trafficking for investigators from both organisations.

The PSNI is also an active participant of the United Kingdom Human Trafficking Centre's Working Group which examines and develops good practice concerning investigations and prosecutions.

### Convictions

There have been two convictions for human trafficking recently in separate cases, and others are being prosecuted by the Public Prosecution Service.

Securing convictions has been difficult as often victims decline to cooperate with the PSNI and UKBA. Frequently this is because their traffickers have built in fear of the authorities or simply threatened them or their families if they give evidence against their traffickers. The priority is to recover the victim and secure their safety and not to press them to give evidence.

### Tackling demand

Section 15 of the Policing and Crime Act 2009 created a strict liability offence which is committed if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. The 'purchaser' does not need to know the prostitute has been trafficked.

### Sentencing

The Lord Chief Justice's Sentencing Group issued sentencing guidelines in this area in April 2012. The Minister plans to add trafficking for non-sexual purposes to the schedule of offences referable to the Court of Appeal on the grounds of being unduly lenient. Trafficking for sexual exploitation is already covered.

### Public Prosecution Service (PPS) Policy

The PPS launched a public consultation on its policy for Prosecuting Cases of Human Trafficking on 8 June 2012. The Policy explains the role of the PPS and the way in which it deals with cases involving human trafficking and the wide range of other crimes associated with it. It provides guidance about how decisions as to prosecution are taken and also outlines the services available to victims and witnesses of trafficking.

## **Support for victims**

### Adults - Migrant Helpline/ Women's Aid

The Department of Justice funds a package of support for all adult victims of human trafficking recovered in Northern Ireland. This amounted to £145,000 in 2011/12 and includes safe and appropriate accommodation, help with day to day living expenses, access to healthcare, counselling and other specialist services. It is delivered by Migrant Helpline and their delivery partner Women's Aid Federation Northern Ireland and is overseen by a Stakeholder Group with representatives of the Department of Justice, Police Service of Northern Ireland, UK Border Agency, Migrant Helpline, Women's Aid and DHSSPS.

### Child Victims – DHSSPS

Child victims of trafficking are entitled to the full range of services afforded to looked after children under the Children (NI) Order 1995. Support for child victims is a matter for the Department of Health, Social Services and Public Safety. Guidance on the working arrangements for the welfare and protection of child victims, developed by PSNI and DHSSPS, was published in February 2011. It sets out information for practitioners, agencies and public facing service providers about human trafficking and its indicators and on the arrangements in place for child victims.

## **Raising Awareness**

### Changing the Mindset

The OCTF has been developing a "Changing the Mindset" project to engage more effectively with the public and reduce demand for products and services provided by organised gangs. This has included research to see if similar initiatives have been attempted elsewhere, interviews with stakeholders, focus groups with a cross section of the general public and a questionnaire. The project, which covers the range of organised crime enterprises including human trafficking, will develop a communication strategy that will be available this financial year.

*The Blue Blindfold campaign*

The Blue Blindfold campaign was re-launched last year. This reinforced the message that human trafficking happens across Northern Ireland; sought to make people aware of the signs to look out for; and encouraged members of the public to report their suspicions to Crimestoppers.

*Leaflet and poster*

The OCTF also developed a multi-lingual "Visitor or Victim?" leaflet and poster targeted at potential victims. These are displayed at key places where victims might be, including ports, main railway stations, health centres and doctors' surgeries.

*Adult Guidance*

The Department of Justice and the Department of Health, Social Services and Public Safety are jointly developing "Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking" in consultation with Amnesty International and the Law Centre. While primarily directed at the PSNI and Health and Social Care Trusts, the guidance sets out information for all practitioners, agencies and public facing service providers about human trafficking and its indicators and on the arrangements already in place for adult victims of human trafficking.

*Leaflet for Possible Victims*

The Department of Justice will, later this year, work with Amnesty International to develop a multi-lingual leaflet for victims of trafficking.

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**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1406/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

05 September 2012

Dear Christine

#### **HUMAN TRAFFICKING UPDATE**

I wrote to you on 27 July on the subject of human trafficking. The Minister of Justice has asked me to write to you again to provide an update on the various strands of work on human trafficking that will come to the Committee in the next couple of months.

The purpose of the update is to assist planning for those aspects where the Committee may wish to have an oral hearing on this issue and/or consider any further written documentation due during this period. Given the profile and timescales for delivery of the work, it would be helpful if we could discuss how the Committee might want to schedule this work programme.

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### **EU Directive and the EU Strategy**

The Committee has asked the Organised Criminal Task Force (OCTF) sub group on Immigration and Human Trafficking to appear on 20 September. The purpose of this session is to brief members on the responses to the consultation on the EU Directive provisions (now contained in the Criminal Justice Bill). A paper will be provided before the oral session.

Work is ongoing on a paper for the Committee on compliance with the Directive more generally. Members are asked to note that there are a few areas on this paper on which we are waiting for advice, for instance from the Home Office as to whether or not secondary legislation is required.

### **Guidance document for those engaging with Adult Victims of Human Trafficking**

The Committee has seen the draft of this document which was prepared with DHSSPS and in consultation with Amnesty International and the Law Centre. The consultation period ended on 31 August and it is proposed to notify the Committee of the consultation responses, and any proposed amendments to the draft guidance document, in time for its meeting on 27 September with a view to a joint DHSSPS/DOJ launch on 9 October. The document is a “living one” and will be amended, as necessary, after its adoption.

### **Report by the Council of Europe’s group of experts on action against trafficking in human beings (GRETA).**

This report, which covers the United Kingdom, is expected to be published in mid-September and will be forwarded to the Justice Committee at that stage. A note



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examining its recommendations and the proposals on the way forward in Northern Ireland will then be prepared and sent to the Committee.

### **Criminal Justice Bill**

DOJ officials are anticipating that they will be giving evidence to the Committee on the human trafficking elements of the Criminal Justice Bill, probably in early October. We await confirmation from the Committee as to whether or not this is required, and if so when.

### **Consultation with Non-Governmental Organisations (NGOs)**

The Committee approved a consultation document on engagement with Non-Governmental Organisations (NGOs) earlier this year. The consultation ended on 28 June 2012 and responses are being analysed. It is anticipated that a paper on the results will be sent to the Committee for its consideration on 11 October. This paper will set out the Minister's plans for ongoing engagement with NGOs which he would then propose to publish on 18 October to coincide with Anti Trafficking Day. The Minister has asked officials to arrange a conference with NGOs on 18 October, and an invitation to this will be sent to the Committee.

### **Inter-Departmental Ministerial Group (IDMG) Report**

The IDMG, which comprises Ministers from the Westminster Government, the Scottish Executive, the Welsh Government and Minister of Justice in Northern Ireland, will be producing an annual report, a copy of which is likely to be published to coincide with the Anti-Trafficking Day. A copy of this report will be shared with the Justice Committee.

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**Lord Morrow's draft Private Member's Bill on Human Trafficking and Exploitation**

The Department, in conjunction with other OCTF agencies, is currently analysing Lord Morrow's consultation document on his draft Bill. A copy of our consultation response to Lord Morrow will be copied to the Committee for its information. The deadline for comments set by Lord Morrow is 18 October and we are aiming to meet that date.

I hope the Committee find this useful.



**BARBARA McATAMNEY**  
**DALO**

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90528121  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Your ref:  
Our ref: SUB/1477/2012

Mr Paul Givan MLA  
Chair of the Committee for Justice  
Northern Ireland Assembly  
Room 242, Parliament Buildings  
Stormont  
Belfast BT4 3XX

12 September 2012

*Des Paul*

**PUBLICATION OF REPORT BY THE COUNCIL OF EUROPE'S GROUP OF EXPERTS ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (GRETA)**

I am writing to advise Committee Members that the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) assessment, of the measures taken by the United Kingdom to implement the provisions of the Council of Europe Convention on Action against Human Trafficking, will be published on GRETA's website today. It can be accessed at:

[http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA\\_2012\\_6\\_FGR\\_GB\\_en.pdf](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2012_6_FGR_GB_en.pdf)

The report makes 35 proposals, of which one is specific to Northern Ireland. It calls on the Public Prosecution Service (PPS) to promptly issue guidance on trafficking offences in Northern Ireland. The PPS launched a consultation on this policy on 11 June 2012 and hopes to publish the finalised policy before the end of this year.

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I have asked DOJ officials to analyse the report, assess the implications for Northern Ireland and, where required, develop proposals for action within the auspices of the Organised Crime Task Force and its sub-group on Immigration and Human Trafficking. I will share this with the Committee when that analysis has been completed.

*Yon*

*David Ford*

**DAVID FORD MLA**  
**Minister of Justice**

FROM THE OFFICE OF THE JUSTICE MINISTER



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**Justice**

[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
Fax: 028 90528597  
Teletext: 028 90527668  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref: SUB/1467/2012

**From:** Barbara McAtamney  
**Date:** 12 September 2012  
**To:** Christine Darrah

**Organised Crime Task Force (OCTF) Immigration and Human Trafficking Subgroup – briefing for the Committee on 20 September 2012.**

**Summary**

**Business Area:** Safer Communities

**Issue:** Issues raised by respondents during the consultation on the two new human trafficking offences required to comply with the criminal aspects of the EU Directive on Human Trafficking.

**Restrictions:** None.

**Action Required:** To note the paper attached, in advance of the briefing for the Committee on 20 September. This sets out the issues raised and the action proposed by the Immigration and Human Trafficking (IHT) Subgroup.

**Attendees:** Simon Rogers, Protection and Organised Crime Division, DOJ;  
Detective Superintendent Phil Marshall PSNI, Chair of the IHT Subgroup;  
Mike Golden, UK Borders Agency; and  
Dawn Harmon, Community Safety Unit, DOJ.

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### **Background**

At the Committee for Justice meeting on 21 June, the Committee considered a summary from the Department of the responses received to the consultation on the legislative amendments required for compliance with the criminal aspects of the EU Directive. A copy of the paper is attached (Annex D). As the Committee is aware, provision for the necessary legislative amendments to the criminal law is being made in the Criminal Justice Bill. The summary noted that none of the respondents disagreed with the Department's proposals in relation to the creation of the new human trafficking offences but some commented that they felt the Department could go further and offered suggestions as to how. The Committee noted at the meeting that these would be considered by the IHT Subgroup and has asked for an oral briefing by the Subgroup and a written paper on which issues were referred to it; what the Subgroup's key proposals are to tackle these and whether further legislation is needed to address these issues.

### **The IHT Subgroup on Immigration and Human Trafficking**

2. A paper setting out the aim, role and membership of the Subgroup is at Annex A.

### **Responses to the consultation on the new criminal provisions: EU Directive issues**

3. A summary of the issues raised by the respondents which relate specifically to Articles in the EU Directive is set out in Annex B; these are being considered as part of our work on compliance. As explained in previous correspondence to the Committee dated 5 September, a paper on compliance with the Directive is being prepared for the Committee. This will cover these points and others raised by respondents to the consultation on engagement with non governmental organisations (NGOs).

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### **Other issues raised during consultation on the new criminal provisions**

4. The general issues which were raised by respondents are noted on the table at Annex C. These were referred to the IHT Subgroup and the position on each, as proposed by the Subgroup and agreed by the Justice Minister, is set out in the table.

5. A number of the suggestions related to making statutory provision for various aspects, such as definitions of “habitual residence” or “victim”. The Subgroup noted that there is a considerable risk in being overly prescriptive and enshrining certain aspects in legislation as this can –

- limit flexibility in relation to dealing with individual cases;
- make it more difficult to respond quickly to changes in criminal behaviour; and
- could, for example in the case of ‘habitual residence’, provide criminals with a means to work around the legislation.

### **Consultation on engagement with NGOs**

6. The IHT Subgroup has also considered the responses received to the Department’s consultation on engagement and its proposals for taking these forward will now be considered by the Minister of Justice. As noted in the correspondence on 5 September, a paper on the results of this work will be sent to the Committee for its meeting on 11 October, in advance of the publication of the summary on both parts of the consultation on 18 October which is Anti-Trafficking Day.

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### **Human trafficking in Northern Ireland**

7. The Committee may find the following update useful. During 2011, 23 potential adult victims of human trafficking in Northern Ireland were referred to the National Referral Mechanism (NRM). This is the framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support. Of the 23 cases, eight were potential victims of labour exploitation and 15 were potential victims of sexual exploitation. Two cases were withdrawn from the NRM; consideration was suspended in three cases where the victim was no longer in contact with the authorities; five were not considered to be victims of human trafficking and ten were identified as victims. Decisions in the other three cases were awaited at the end of August 2012.

8. Nine minors were referred to the NRM during 2011, all potential victims of sexual exploitation. Following the conclusion of the NRM procedures, all nine were identified as victims of human trafficking.

9. Between January 2012 and March 2012, there have been five adult referrals to the NRM; three were potential victims of sexual exploitation and two of labour exploitation. One case was withdrawn; two have been identified as victims of human trafficking and decisions are awaited in the remaining two cases. There were no minors referred during this period.

### **Conclusion**

10. I hope the Committee finds this paper useful.

  
**BARBARA McATAMNEY**  
**DALO**

**ENC**

**Building a fair, just and safer community**



## **ANNEX A**

### **IMMIGRATION AND HUMAN TRAFFICKING SUB GROUP**

The Organised Crime Task Force (OCTF) was established in 2000 to provide a multi agency partnership approach to tackling organised crime in Northern Ireland (NI). The OCTF provides strategic direction through a partnership which is supported by a number of sub groups including the Immigration Crime and Human Trafficking (IHT) Subgroup.

#### **Aim**

The overarching aim of the IHT Subgroup is to achieve a better understanding of human trafficking in Northern Ireland and to improve co-operation between partner agencies to ensure Northern Ireland becomes a hostile place for those involved in this type of activity.

#### **Role**

The role of the Subgroup is -

- To promote information and intelligence sharing between stakeholders.
- To identify emerging trends and issues in relation to human trafficking in NI and devise strategies for addressing these through a partnership approach.
- To identify barriers to effectively dealing with human trafficking in NI and devise solutions for addressing these.
- To raise awareness of human trafficking in NI, both within organisations and in communities, and to provide strategic direction to communities in NI surrounding human trafficking.

#### **Membership**

The core membership is as follows –

- An Garda Síochána
- Department of Employment and Learning
- Health and Social Care Board
- Department of Justice

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- Gangmasters Licensing Authority
- Police Service of Northern Ireland
- Public Prosecution Service
- Serious and Organised Crime Agency
- UK Border Agency
- UK Human Trafficking Centre

Representatives from other organisations may be invited to attend particular meetings or for certain agenda items.

The Subgroup is chaired by the PSNI and the DOJ provides secretaryship.

## **ANNEX B**

### **Responses to the consultation on the new criminal provisions: EU Directive issues**

**Note:** These responses are being considered as part of the Department of Justice's work on compliance with the directive, and will be addressed in a paper for the Justice Committee – DALO letter of 5 September 2012 refers.

#### **Article 2: offences and Article 4: penalties**

There is not currently an adequate definition of trafficking in the legislation governing Northern Ireland, along the lines of Article 2.

The requirements of Article 2(1) & 2(3) mean that the Asylum and Immigration Act 2004 should be amended to specifically include forced begging and exploitation of criminal activities.

#### **Article 8: Non-prosecution or non-application of penalties to the victim**

The inclusion of a provision on non-criminalisation of trafficked victims in legislation can further strengthen the protection of victims and would be more in line with Article 8 (Non-Prosecution or Non-Application of Penalties to the Victims) of the EU Directive as well as Article 26 of the Council of Europe Convention.

Non-prosecution or non-application of penalties to the victim - this issue has not yet been sufficiently addressed. The Directive does not require this to be enshrined in primary legislation, but provision must be made to ensure that there are robust guidelines in place concerning the non-prosecution of the victim of trafficking.

#### **Article 9: Investigation and prosecution**

The Directive mandates that the proceedings should not be dependent on the reporting or accusation of the victim, and that the proceedings should be able to continue if the victim withdraws their statement (Article 9(1)) but they are not set out in the legislation governing Northern Ireland.

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Northern Ireland may already be complying with the provisions under Articles 9(3) and 9(4) regarding training and the availability of proper investigative tools. However, if this is not contained in the legislation, there is a risk that these services are vulnerable to cuts.

#### **Article 11: Assistance and support for victims**

There is support currently being provided in line with that described in Article 11, but if it is not set out in national legislation then Northern Ireland will remain at risk of non-compliance

There should be discretion for the judiciary to extend the 45 day reflection period.

The Department of Justice, should legislate – beyond those mandated by the 2011 EU Directive related to the offender – to protect the human rights of the victims of human trafficking through the introduction of a comprehensive trafficking bill.

#### **Article 12: Protection of victims in criminal proceedings**

Victims of trafficking should have access to legal advice (Article 12(2)). It is unclear whether current support is offering this to an adequate level. England and Wales introduced additional legislation in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to ensure victims of labour trafficking would have proper access to free legal counselling.

Adequate protection for victims of trafficking during the investigation and prosecution of an offence should be enshrined in the legislation, including amendments to the Criminal Evidence (Northern Ireland) Order 1999 to ensure “special measures” for trafficking victims acting as witnesses (Article 12(4)).

Treatment of victims in criminal investigations should be provided for in legislation.

Victims should be automatically eligible for special measures.

There should be special status for victims of trafficking once identified, similar to those who have experienced domestic abuse and rape.

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### **Articles 13-16: Provisions relating to child victims**

Northern Ireland does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare.

There is a need for a Guardian or Representative for Trafficked Children (Article 14(2) & 16(3)). Current legislation in Northern Ireland does not provide for a Guardian.

### **Article 17: Compensation to victims**

Given the difficulty victims of trafficking in England and Wales have had accessing compensation, there should be clarity in the Northern Ireland legislation about exactly what rights victims have to the different compensation schemes available (e.g. criminal injuries compensation, employment tribunal etc) and, crucially, whether they have leave to remain to avail themselves of such opportunities.

### **Article 18: Prevention**

While actions are being taken to raise awareness and prevent trafficking in human beings, this is another area that has not been provided for in legislation. Particular issues of concern are actions taken to reduce demand (Article 18(1)) and regular training for those officials likely to come into contact with victims or potential victims (Article 18(3)).

There should be compulsory education in schools on human trafficking and the wider issues.

There should be more North/South co-operation between the respective border agencies, NGOs, PSNI/Gardai and political representatives to deal with the trafficking of people across the border.

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**Article 19: National rapporteur or equivalent mechanism**

The UK has an interdepartmental ministerial group in place which, it has been maintained, together with the UK Human Trafficking Centre, fulfils the Directive's requirement to have a mechanism equivalent to a national rapporteur (Article 19) This is inadequate primarily because the monitoring system is not independent of government.

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ANNEX C

WAY FORWARD

ADDITIONAL ISSUES RAISED IN CONSULTATION ON NEW CRIMINAL PROVISIONS

Note: These issues were referred to the OCTF Immigration and Human Trafficking Sub Group. The way forward was proposed by the Sub Group and approved by the Minister.

Topic	Detail	Comments	Way forward
Legislative issues	A fine not exceeding level 3 on the standard scale (£1,000) in relation to payment for the sexual services of a prostitute who has been coerced does not serve as strong deterrence – this fine should be increased.		Refer to DOJ Criminal Policy Branch to consider
	The system of licensing employers under the Gangmasters Licensing Act (GLA) 2004 is not adequate	A review of the Gangmasters Licensing Authority was conducted by DEFRA and changes have been announced including targeting its work, streamlining the licensing process and looking at the scope to use civil penalties.	Refer to DEFRA/DARD for consideration.
	The maximum penalty for acting as a gangmaster without a proper license should be increased.	Set out in Section 12 of the GLA 2004. On summary conviction in Northern Ireland (and in Scotland) imprisonment for up to 6 months or up to £5,000 or both. On indictment, up to 10 years or a fine or both.	Refer to DEFRA/DARD for consideration.
	A summary conviction for the same offence in Northern Ireland attracts a maximum of 6 months' imprisonment, while it is 12 months in England and Wales.	There is a general criminal law procedure difference between Northern Ireland and England and Wales. When dealing with summary offences a Northern Ireland District Judge has power under the Magistrates' Court (Northern Ireland) Order 1981 ("the 1981 Order") to impose a fine up to the maximum of the statutory scale of £5,000 or six months in prison or both. The 1981 Order provides that where an indictable offence can be heard in the magistrates' courts and the sentence exceeds six months, the defendant may opt for trial in the higher Crown Court and, where s/he does not so opt, the District Judge in this situation can impose a sentence of imprisonment up to 12 months.	No action required. This is due to a general criminal law procedure difference between Northern Ireland and England and Wales.

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Topic	Detail	Comments	Way forward
Legislative issues cont'd	<p>Section 71 of the Coroners and Justice Act 2009 prohibits slavery, servitude and forced labour. However, there is a legislative gap in relation to summary conviction where the offence carries only 6 months' imprisonment in Northern Ireland when it is 12 months in England and Wales. This should be amended accordingly.</p> <p>Current penalties and sentences in relation to human trafficking are not harsh enough.</p>	<p>The standard summary procedure imprisonment period is six months. Section 154 of the Criminal Justice Act 2003 made provision for E&amp;W to increase the general limit on magistrates' courts powers to impose imprisonment in respect of any one offence (comparable to our six months powers) from six to twelve months.</p> <p>See above.</p>	See above.
	<p>Article 4.2 of the EU Directive requires that Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:</p> <ul style="list-style-type: none"> <li>(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;</li> <li>(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (1);</li> <li>(c) deliberately or by gross negligence endangered the life of the victim; or</li> <li>(d) was committed by use of serious violence or has caused particularly serious harm to the victim.</li> </ul>	<p>Article 4.2 of the EU Directive requires that Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:</p> <ul style="list-style-type: none"> <li>(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;</li> <li>(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (1);</li> <li>(c) deliberately or by gross negligence endangered the life of the victim; or</li> <li>(d) was committed by use of serious violence or has caused particularly serious harm to the victim.</li> </ul>	<p>Not agreed. The maximum term of imprisonment in Northern Ireland under provisions in the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 is 14 years.</p>
	<p>There should be mandatory prison sentences for</p>		<p>Sentences are a matter for the judiciary. Guidance was set down by Judge Burgess in R v Pils in 2012.</p>

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Topic	Legislative issues cont'd	trafficking offences including users of trafficked victims	Detail	Comments	Way forward
		"Habitual residence" should be defined in legislation	Definition of "victim" is required	<p>The term "habitual residence" occurs in a number of Conventions and Directives and the common denominator is that it is not defined in them. The Human Trafficking Directive contains no definition. Case law is clear that it should be given its ordinary and natural meaning having regard to the facts of the case.</p> <p>The accepted definition of human trafficking is already set out in United Nations Palermo Protocol and in Article 4 of the Council of Europe Convention on Action against trafficking in Human Beings. The Convention defines a victim as any natural person who is subject to trafficking in human beings as defined in Article 4. The National Referral Mechanism is the victim identification process.</p>	<p>A statutory definition is not required.</p> <p>This is not required on a legislative basis.</p>
		Extra-territorial jurisdiction should be established to prosecute individuals who have committed trafficking offences abroad against UK nationals or habitual residents.		<p>The provisions of the Criminal Justice Bill provide for jurisdiction over British citizens, persons habitually in Northern Ireland or companies registered in the UK in respect of sexual trafficking or labour exploitation activities undertaken by them in countries outside the UK.</p> <p>In particular, clause 5 of the Criminal Justice Bill inserts into the Sexual Offences Act 2003 a new section 58A ("Trafficking outside the UK for sexual exploitation").</p> <p>Clause 6 of the Bill introduces a similar extension of jurisdiction in what will be section 4(3A) ("Trafficking people for other exploitation") of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 ("the 2004 Act"). These reforms comply with the mandatory extension of jurisdiction required in respect of offenders who are nationals of a Member State (see article 10(1)(b) of the Directive 2011/36/EU ("the Trafficking Directive")) and exercise the discretionary option to extend jurisdiction to companies established in and habitual residents</p>	<p>Not agreed, if the intention of the suggestion is to catch foreign individuals or companies trafficking or exploiting British citizens etc then this would be beyond our legal jurisdiction and would be for the country concerned.</p>

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Topic	Detail	Comments	Way forward
Legislative issues cont'd	Aggravating factors should be specified in the legislation.	The Magistrates' Courts sentencing guidelines set out general principles of sentencing which detail general aggravating and mitigating factors. In addition, the guidance issued at the request of the Lord Chief Justice's Sentencing Group in 2012 in the Crown Court case of RVPi's, set out aggravating factors in relation to offences for human trafficking. These guidelines were applied in the RvRon Chen and others case in July 2012.	Not required – this is not a matter for legislation. It is a matter for the trial judge.
Victims support/children	The Young Witness Prevention and Support Services should be in legislation	The NSPCC is funded by the DOJ to operate the Young Witness Scheme to support witnesses under 18 years when giving evidence in court.	Not required on a legislative basis. Other issues related to children were also raised in the consultation on engagement with NGOs and will be covered in the paper on engagement which will be sent to the Committee.
Training	There should be trained police and customs officers at airports and ports		Training is already in place for police and customs officers. A number of issues related to training were also raised in the consultation on engagement with NGOs and will be covered in the paper on engagement which will be sent to the Committee.
Awareness raising	The haulage industry should be considered as potential partners in the sharing of awareness and information on a Europe-wide level.		IHT subgroup to consider as part of the work on raising awareness. A number of issues related to raising awareness were also raised in the consultation on engagement with NGOs and will be sent to the Committee.
Other	There should be accelerated case handling for victims. A special PSNI team should be set up to tackle human trafficking.	Not clear if this relates to handling by the NRM or criminal cases. An online training package for police, targeted at frontline officers and staff to assist in the recognition of signs of trafficking, is already in place. Over 2000 PSNI officers and staff have successfully completed the training. In addition, PSNI's Organised Crime Branch has introduced and delivered bespoke training	IHT subgroup to consider. Not agreed; frontline officers need to be able to deal with these issues.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1501/2012

Ms Christine Darrah  
Clerk to the Justice Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont  
Ballymiscaw  
Belfast  
BT4 3XX

19 September 2012

Dear Christine

**DRAFT GUIDANCE ON WORKING ARRANGEMENTS FOR THE WELFARE AND PROTECTION OF ADULT VICTIMS OF HUMAN TRAFFICKING**

I wrote to you on 2 July outlining the Department of Justice's proposal to consult a targeted audience on draft Guidance on Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking. The Department has jointly developed this guidance with the Department of Health, Social Services and Public Safety.

We offered to provide a briefing paper for discussion, on the outcome of the consultation, at the Committee's meeting on 27 September. Please now find attached a summary of the responses and the way forward at Appendix A, a revised copy of the guidance at Appendix B and a comprehensive list of responses at Appendix C.

  
**BARBARA McATAMNEY**  
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**APPENDIX A**

**WORKING ARRANGEMENTS FOR THE WELFARE AND PROTECTION  
OF ADULT VICTIMS OF HUMAN TRAFFICKING**

**CONSULTATION REPONSES AND WAY FORWARD**

Background

1. The Department of Justice advised the Justice Committee on 2 July that it intended to launch a targeted consultation on draft Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking, developed jointly with the Department of Health, Social Services and Public Safety in consultation with Amnesty International and the Law Centre.
  
2. We offered to provide a paper on the outcome of the consultation.

Detail

3. A targeted consultation was launched on 6 July when almost three hundred consultees were invited to comment on the draft guidance. They included:
  - members of the Organised Crime Task Force's Immigration and Human Trafficking Sub Group comprising representatives of PSNI, UK Border Agency, Serious Organised Crime Agency, Public Prosecution Service, Gang Master Licensing Authority and the Department of Education and Learning;
  
  - Community Safety Unit's Human Trafficking Stakeholder Group comprising representatives of PSNI, Migrant Help, Women's Aid, UK Border Agency, the Department of Justice and the Health and Social Care Board;

- each Health and Social Care Trust;
- each District Council;
- NIPSA; and
- The Law Centre for Northern Ireland and Amnesty International who were also involved in developing the guidance.

#### Responses

4. Responses were received from 16 consultees. These have now been analysed jointly by the Department of Justice and the Department of Health, Social Services and Public Safety and are set out in full at Annex B for the Committee's information.

5. A number of recurring themes emerged including requests to clarify the intended audience for the guidance; to confirm who may act as a First Responder and to highlight the need to engage legal advice for victims at an early stage. Amendments have been made to the draft guidance to address these issues.

6. A number of Health and Social Care Trusts noted that training and awareness raising would be required and this is being addressed by the Health and Social Care (HSC) Board which is conducting a training needs analysis and will develop a training plan. Plans are in place to roll out a series of training and awareness events for HSC Trust staff. The first of these, which has been arranged jointly by the Board and PSNI, is being held on 9 October.

7. Four NGOs raised concerns about information sharing and confirmed that they would not contact the police without the victim's consent. The

guidance encourages anyone who comes into contact with a suspected victim of human trafficking to engage with PSNI but does not compel NGOs to do so. It does, however, require HSC Trust staff to report their concerns to their Adult Safeguarding Designated Officer who will initiate a protective response which will include invoking procedures established under Safeguarding Vulnerable Adults and the associated Protocol for Joint Investigations.

8. Requests to include information for victims have not been incorporated as that is not the purpose of the guidance but they will be considered for inclusion in the leaflet for victims that the Department is planning to develop later this year, in conjunction with Amnesty International.

9. Access to healthcare and social services, if a person is not deemed to be a victim of human trafficking and has no recourse to public funds, was raised by some HSC Trusts, the Law Centre, STEP and Women's Aid. The guidance focuses on the welfare and protection of potential and confirmed victims of human trafficking. It does not extend to those deemed not to be victims but DHSSPS is in the process of developing guidance for the Social Care sector, which seeks to clarify the law around access to social care by both EEA and non-EEA nationals.

10. The guidance will be routinely reviewed and updated to take account of policy changes that may impact on working arrangements and to reflect areas of best practice that develop over time.

#### Next Steps

11. It is proposed that the guidance will be launched by the Minister of Justice and the Minister of Health Social Services and Public Safety on 9 October to an audience of PSNI officers and HSC Trust staff.

12. A copy of the guidance is attached at Appendix B and a comprehensive list of responses to the consultation, and our proposed way forward on each one, is attached at Appendix C.

DH1/12/221085

# Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking

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**Guidance issued by**  
**The Department of Justice and**  
**The Department of Health, Social Services**  
**and Public Safety**



**October 2012**

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## GLOSSARY OF TERMS

**An adult** is a person who has attained the age of 18 years.

**Competent Authorities** determine, through the National Referral Mechanism (NRM) framework, whether there are reasonable or conclusive grounds for a person referred to be accepted as a victim of human trafficking. The Competent Authorities for the United Kingdom (UK) are the UK Human Trafficking Centre (UKHTC), which is part of the Serious Organised Crime Agency (SOCA), and the UK Border Agency (UKBA). The UKHTC considers cases involving UK or European Economic Area (EEA) Nationals. The UKBA considers cases where trafficking is raised as part of an asylum claim or in the context of another immigration process.

**European Economic Area (EEA) National** for the purpose of this guidance, means a National of Switzerland or of one of the following countries that, with the UK, make up the EEA, i.e. Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

**First Responder in the National Referral Mechanism (NRM) Process** is a member of staff within certain public bodies who has direct or indirect contact with a person who claims to have been trafficked or whom the staff member believes may have been trafficked. A range of agencies in Northern Ireland, including the Serious Organised Crime Agency (SOCA) and the Gangmasters Licensing Authority (GLA)<sup>1</sup> are designated as First Responders along with the DHSSPS and the PSNI. A full list of First Responders is available on the SOCA website<sup>2</sup>. In cases involving potential adult victims the role is primarily performed by the PSNI. The First Responder completes a NRM Report Form and submits it to the UKHTC so that the case can be processed through the NRM framework.

**HSC Board** is the public body responsible for planning and commissioning health and social care services primarily from HSC Trusts.

**HSC Trusts** are the public bodies responsible for the delivery of health and social care services on behalf of the HSC Board. There are 5 HSC Trusts in Northern Ireland. In addition, the Northern Ireland Ambulance Service operates a single Northern Ireland wide Ambulance Trust with operational areas reflecting those covered by the other 5 HSC Trusts.

**Human Trafficking**, in the simplest terms, is the forced removal of people from their communities and exploiting them using violence, deception, coercion, the abuse of

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<sup>1</sup> The Gangmasters Licensing Authority (GLA) is an organisation set up to protect workers from exploitation. Information about its work and contact details can be accessed through: <http://gla.defra.gov.uk/>

<sup>2</sup> A list of First Responders can be accessed through: <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>

power or the abuse of someone's vulnerability. This movement can be between or within countries.

**Merton-Compliant Age Assessment** is a term used to describe a local authority age assessment that has been conducted in accordance with the case law on age assessments and is therefore fair and lawful. The term derives from the Merton judgment of 2003 [The Queen on the application of B v London Borough of Merton [2003] EWHC 1689 (Admin) (14 July 2003)] which gives guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker claiming to be under the age of 18 years.

**Migrant Help** is a charity which aims to be a leading provider of quality support to migrants in distress. Migrant Help is contracted by the Department of Justice to support adult victims of human trafficking in Northern Ireland and has formed a delivery partnership with Women's Aid Federation (NI) to ensure that male and female victims are supported. Migrant Help supports male victims and, in certain circumstances, female victims. Women's Aid Federation (NI) supports female victims.

**National Referral Mechanism (NRM)** is a victim identification and support process. It provides a framework within which front-line professionals in public bodies, such as HSC Trusts, PSNI, UKBA and others can work together to provide appropriate protection and support for adults who are suspected of being trafficked. It is also a mechanism to provide as much information as possible to the Competent Authority to assist its determination of whether a person is a victim of trafficking.

**Non-EEA National** for the purpose of this guidance, means a person who does not hold British citizenship or citizenship of Switzerland or citizenship of an EEA country.

**People Smuggling**, in broad terms, is a business transaction between a person wishing to enter a country illegally and a facilitator; it always involves illegal border crossing and entry to another country.

**Police Service of Northern Ireland (PSNI)** has established 8 local Public Protection Units comprised of skilled and experienced police officers specially trained to investigate all manner of sexual and violent crime, such as rape, domestic abuse and adult abuse and exploitation. The PSNI is a First Responder.

**The Serious Organised Crime Agency (SOCA)** tackles serious organised crime that affects the UK and its citizens. This includes Class A drugs, people smuggling, human trafficking, major gun crime, fraud, computer crime and money laundering.

**United Kingdom Border Agency (UKBA)** is an agency of the Home Office and is responsible for securing the UK border and controlling migration in the UK. The UKBA manages border control and enforces immigration and customs regulations. It also considers applications for permission to enter or stay in the UK; citizenship; and asylum. The UKBA is a First Responder and a Competent Authority in cases where trafficking is raised as part of an asylum claim or in the context of another immigration process.

**United Kingdom Human Trafficking Centre (UKHTC)** is a multi-agency organisation led by the SOCA. Its role is to provide a central point of expertise and co-ordination in relation to the UK's response to the trafficking of human beings. UKHTC seeks to facilitate a co-ordinated, cooperative and collaborative way of working within the UK and internationally. It is the role of the UKHTC to determine if individuals who are British citizens, EEA Nationals or Non-EEA Nationals who have extant leave to enter or remain in the UK and who are suspected of being trafficked, are the victims of trafficking and to record them as such. The UKHTC also offers a 24/7 advice line staffed by experienced investigators to support first responders and those who come into contact with potential victims of trafficking. This support includes short, medium and long term advice regarding victim identification, victim care, NRM, legislation and investigation.

**Women's Aid Federation (NI)** provides advice, support, refuge, aftercare to women and children suffering from domestic violence and supports adult female victims of human trafficking in Northern Ireland.

**Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking** is guidance that has been produced by the DHSSPS and PSNI in relation to child victims of trafficking. HSC Trusts have a central role in the referral and care of children.

## 1. INTRODUCTION

1.1 This guidance is issued by the Department of Justice (DoJ) and the Department of Health, Social Services and Public Safety (DHSSPS). It replaces the Pentameter 2<sup>3</sup> Protocol in respect of Adult Victims of Trafficking issued by the DHSSPS in October 2007. It should be read in conjunction with existing national legislation and guidance relating to victims of human trafficking including *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*.<sup>4</sup>

1.2 The Police Service of Northern Ireland (PSNI) has a key role in combating human trafficking with regard to its prevention, detection and the recovery and protection of victims. Health and Social Care (HSC) Trusts have a role in the recovery, support and rehabilitation of adult victims. This guidance is primarily for use by the PSNI and HSC Trusts. However, all practitioners, agencies and public facing service providers have an important role in identifying and securing help for victims of trafficking and should engage with the PSNI and HSC Trusts.

1.3 In March 2007 the United Kingdom (UK) Government signed the *Council of Europe Convention on Action against Trafficking in Human Beings* (the Convention against Trafficking)<sup>5</sup> and published the *UK Action Plan on Tackling Human Trafficking*<sup>6</sup> which stresses the commitment of government to promoting a victim-centred approach to combating trafficking. The purpose of the Convention against Trafficking is:

- to prevent and combat trafficking;
- to identify and protect the victims of trafficking and safeguard their rights; and
- to promote international co-operation against trafficking.

<sup>3</sup> Pentameter 2 was a co-ordinated campaign of activity during 2007 aimed at disrupting those who engage in trafficking for sexual exploitation throughout the UK and the Republic of Ireland. It involved all police forces, other law enforcement agencies, the UK Human Trafficking Centre and statutory and voluntary agencies

<sup>4</sup> The *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking* can be accessed at:  
[http://www.dhsspsni.gov.uk/oss\\_working\\_arrangements\\_for\\_the\\_welfare\\_safeguarding\\_of\\_child\\_victims\\_of\\_human\\_trafficking.pdf](http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf)

<sup>5</sup> The *Council of Europe Convention on Action against Trafficking in Human Beings* and its Explanatory Report can be accessed at:  
[http://www.coe.int/T/E/human\\_rights/trafficking/PDF\\_conv\\_197\\_trafficking\\_e.pdf](http://www.coe.int/T/E/human_rights/trafficking/PDF_conv_197_trafficking_e.pdf)

<sup>6</sup> The *UK Action Plan on Tackling Human Trafficking March 2007* can be accessed at:  
<http://www.unhcr.org/refworld/pdfid/4948cd3a2.pdf>

- 1.4 The Convention against Trafficking was ratified by the UK on 17 December 2008 and the UK Action Plan updated.<sup>7</sup> Since 1 April 2009 the UK has been bound by formal procedures for assessing and recording cases of human trafficking, including both adult and child trafficking. In Northern Ireland, responsibility for implementing the Convention against Trafficking primarily falls to the DoJ.
- 1.5 While trafficking is largely hidden and there may be very few places where someone from outside has the opportunity to interact with victims; victims may be more easily identified if practitioners and the wider public know what to look for. The Society of Local Authority Chief Executives and Senior Managers (SOLACE) Study Group on Human Trafficking<sup>8</sup> identified five key areas of competence for local authorities in responding to the crime of human trafficking, which merit consideration by practitioners, agencies and service providers in Northern Ireland. The five key areas of competence, adapted, are:
- **victim identification** - staff need to be able to recognise the signs that someone may be a victim of trafficking;
  - **victim support** - the need to attend to the immediate physical needs of victims, as well as the longer term social and psychological needs and advice on legal rights;
  - **assistance with repatriation of victims** - in some instances, practitioners and/or organisations may be involved in the return of a victim to their country of origin;
  - **prevention of human trafficking** - practitioners and organisations may have a role in assisting the police in disrupting organised criminal networks and reducing demand for victims of trafficking in their area; and
  - **working in partnership** - interagency and inter-sectoral cooperation will be required at all levels, including specialist organisations working in this arena.
- 1.6 Victims of human trafficking may be particularly disadvantaged when it comes to seeking help by virtue of their abused status and the gross violation of their human rights, potential fear and distrust of police and government agencies, and culture or language barriers. However, adult victims of human trafficking are considered to be vulnerable adults in the context of *Safeguarding Vulnerable Adults - Regional Adult Protection Policy and Procedural Guidance (Safeguarding Vulnerable Adults)*<sup>9</sup> and the associated *Protocol for Joint*

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<sup>7</sup> *Update to the UK Action Plan on Tackling Human Trafficking October 2009* can be accessed at: <http://www.unhcr.org/refworld/pdfid/4ae574602.pdf>

<sup>8</sup> The SOLACE report *The role of local authorities in addressing human trafficking 2009* is available from the SOLACE website through: <http://www.solace.org.uk/library.asp>

<sup>9</sup> *Safeguarding Vulnerable Adults* can be accessed through: [http://www.hscboard.hscni.net/publications/LegacyBoards/index.html#P-1\\_0](http://www.hscboard.hscni.net/publications/LegacyBoards/index.html#P-1_0)

*Investigation of Alleged and Suspected Cases of Abuse of Vulnerable Adults (Protocol for Joint Investigation)*.<sup>10</sup> Safeguarding Vulnerable Adults defines a vulnerable adult as:

“a person aged 18 years or over who is, or may be, in need of community care services **or** is resident in a continuing care facility by reason of mental or other disability, age or illness **or** who is, or may be, unable to take care of him or herself **or** unable to protect him or herself against significant harm or exploitation”.

- 1.7 In the case of adult victims of trafficking it will be appropriate for the PSNI to engage with the relevant HSC Trust to agree the level of joint working with social services from the point that the victim is identified. Most victims need access to GP services and may require other provision such as mental health or sexual health services as well as, potentially, rehabilitative help in the longer term to integrate within the community. Where there are likely to be ongoing support needs, early liaison between Migrant Help/Women’s Aid Federation (NI) (see **Chapter 5**) and the relevant HSC Trust will be necessary with a view to determining how these needs might/can be met. The need to engage legal advice for recovered victims at an early stage, particularly for non EEA nationals who are subject to immigration control, is essential (see **Paragraphs 5.7 – 5.10**).
- 1.8 This guidance sets out the actions to be taken by the PSNI, HSC Trusts and others in relation to adults where trafficking is suspected or claimed and where victims of trafficking are recovered during police operations. The arrangements outlined here are consistent with current adult protection guidance and the principles of the *European Convention on Human Rights*.
- 1.9 This guidance may be amended from time to time to reflect changes to legislation or policy and procedures in relation to victims of human trafficking.

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<sup>10</sup> The *Protocol for Joint Investigation* can be accessed through:  
[http://www.hscboard.hscni.net/publications/Policies/index.html#P-1\\_0](http://www.hscboard.hscni.net/publications/Policies/index.html#P-1_0)

## 2. HUMAN TRAFFICKING - A BRIEF OVERVIEW

2.1 It is estimated that, globally, between two and four million people are trafficked across borders and within their own country every year.<sup>11</sup> Men, women and children are trafficked for sexual exploitation, forced labour, domestic servitude and other forms of exploitation and the human and economic costs take an immense toll on the victims, their families and communities. By conservative estimates, the economic cost of trafficking in terms of underpayment of wages and recruiting fees, alone, is about \$21 billion globally - and this excludes victims of forced commercial sexual exploitation.<sup>12</sup> The cost in human misery, pain and suffering, however, is impossible to calculate. Human trafficking cuts across a range of issues, from poverty to social inclusion, to justice and the rule of law issues. Consequently, it has profound relevance to practitioners, agencies, provider organisations and society as a whole.

### What Human Trafficking is

2.2 The internationally recognised definition of human trafficking set out in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children*<sup>13</sup> (the Palermo Protocol) is:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

Table 1 sets out the three components of human trafficking.

Table 1: *Source:* The United Nations Office on Drugs and Crime (UNODC)

Process	Means	Purpose
<ul style="list-style-type: none"> <li>• Recruitment</li> <li>• Transportation</li> <li>• Transfer</li> <li>• Harbouring</li> <li>• Receipt of persons</li> </ul>	<ul style="list-style-type: none"> <li>• Threat</li> <li>• Force</li> <li>• Coercion</li> <li>• Abduction</li> <li>• Fraud</li> <li>• Deception</li> <li>• Abuse of power</li> <li>• Abuse of vulnerability</li> <li>• Giving and receiving of payment</li> </ul>	<ul style="list-style-type: none"> <li>• Exploitation which includes:                             <ol style="list-style-type: none"> <li>a) prostitution and other forms of sexual exploitation;</li> <li>b) forced labour and services;</li> <li>c) slavery and similar practices;</li> <li>d) involuntary servitude;</li> <li>e) removal of organs</li> </ol> </li> </ul>

<sup>11</sup> See: <http://www.stopthetraffik.org/>

<sup>12</sup> See ILO (2009), *The cost of coercion* which can be accessed at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_106268.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf)

<sup>13</sup> The *United Nations Convention against Transnational Organized Crime* and its Protocols can be accessed through: <http://www.unodc.org/unodc/en/treaties/CTOC/>



- 2.3 Exploitation is defined in the Palermo Protocol in an inclusive, not exclusive, manner as follows:
- “exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour<sup>14</sup> or services, slavery or practices similar to slavery, servitude or the removal of organs.”
- 2.4 The consent of an adult victim of human trafficking to the intended exploitation becomes irrelevant where any of the means, e.g. force or other forms of coercion or deception, described in the Palermo Protocol are present.
- 2.5 Human trafficking is a serious crime. It is an abuse of basic rights, with the exploitation of human beings for profit at its heart. It is often considered to be an organised crime that works on a large commercial and international scale. However, it can also be perpetrated by a single person who may be known or related to the victim or may be in a position of trust. Similarly, the means of trafficking may be subtle, for example, victims may have an emotional attachment with or loyalty to their trafficker(s) or they may be totally dependent on those who are exploiting them.
- 2.6 All frontline practitioners, agencies and public facing service providers should be alert to the fact that people may be trafficked into, within and out of the UK for many different types of exploitation. Whilst in most cases, victims are brought to the UK from abroad, a worrying trend of trafficking within the UK has emerged, and, more recently, there have been reports in the media of people trafficked out of the UK. Guidance specific to how a frontline practitioner, agency or public facing service provider should respond in circumstances where there are concerns that a person may be a victim of human trafficking is set out in **paragraphs 3.4 – 3.11** of this document.
- 2.7 Historically, most adult victims identified in the UK were women trafficked for sexual exploitation but recent trends suggest that trafficking for labour exploitation could become more prevalent than other forms of trafficking. There were 33 potential victims of human trafficking recovered in Northern Ireland during 2011/12<sup>15</sup>. Their nationalities included British, Czech, Tanzanian, Zimbabwean, Ghanaian, Slovakian, Chinese and Austrian. Eighteen of the victims were female. Seventeen of these females were trafficked for sexual exploitation and one was trafficked for labour exploitation. Seven were males trafficked for labour exploitation and eight were minors (seven of which were UK nationals trafficked within the UK for the purposes of sexual exploitation).

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<sup>14</sup> The *International Labour Organisation Convention 29 Article 2 (1)* defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” subject to the exclusions set out in Article 2 (2)

<sup>15</sup> *Organised Crime Task Force Annual Report & Threat Assessment 2012* can be accessed through: <http://www.octf.gov.uk>

However, this is a truly international crime, with potential victims from over 80 different countries referred to the National Referral Mechanism (NRM) since its inception.<sup>16</sup> Victims may be brought into the UK via numerous transit countries and may travel through other European Economic Area (EEA) countries before arriving in Northern Ireland. The ease of passage across the land border between Northern Ireland and the Republic of Ireland, known to be used by traffickers, presents particular difficulties to authorities in both jurisdictions.

- 2.8 The purposes of human trafficking may include, but are not limited to, sexual exploitation, forced sweatshop or other forced labour for little or no wages, domestic servitude, enforced criminal activity, servile or forced marriage or benefit fraud, and in some circumstances, the removal and sale of organs.
- 2.9 Common features in all forms of trafficking are the coercion, deception or forcing of victims into the control of others who seek to profit from their exploitation and suffering. It may also involve the use of threats or violence against the victim's family, and, in some cases, collusion in trafficking by family members. Traffickers control their victims through violence; debt bondage; restrictions on freedom of movement; instilling fear of authority, for example, telling victims that they will be deported if they seek help; emotional attachment; religion and magic; and isolation. Typically victims are watched, or escorted or guarded by traffickers or associates of traffickers and their activities are restricted to prevent them from seeking help. In addition, traffickers may:
- coach victims to answer questions with a cover story, e.g. about being a wife, relative, student or tourist;
  - instruct them to lie about their age, e.g. to claim they are under 18 years in order to secure the protection of the HSC Trust and potentially the more favourable outcomes for unaccompanied children in immigration decisions, where there is an age dispute (see **Paragraphs 7.11-7.14**); or
  - direct them to claim asylum thereby seeking to exploit the situation that victims will be allowed to remain in the country while their claim is being processed by the UK Border Agency (UKBA). Note: Everyone has the right to seek asylum from persecution (Article 14 of the Universal Declaration of Human Rights; UN Convention on Refugees). No aspersion should be cast on any individual who chooses to exercise this right.
- 2.10 All frontline practitioners, agencies and service providers need to be aware that the profile of trafficking can change over time and that many victims are reluctant to disclose their plight either out of fear of reprisal or due to a misplaced loyalty to their traffickers. Similarly, many victims may be unaware that what is being done to them is a crime; some may not consider themselves to be victims or may blame themselves for their situations. Sometimes they

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<sup>16</sup> *Human Trafficking: The Government's Strategy (July 2011)* can be accessed through: <http://www.homeoffice.gov.uk/crime/human-trafficking-strategy/>

may not even know where they are because traffickers frequently move them to escape detection.

- 2.11 Victims of human trafficking are some of the hardest to reach and most vulnerable victims. Hidden away, deceived, exploited, often brutalised and frightened, they need to be formally identified and provided with a tailored response that fits their vulnerability and needs. Therefore it is important not to stereotype victims and to deal with each victim on an individual basis. No two cases are the same and staff should also be alert to the trauma that disclosure itself may cause to the victims and be aware that time may be needed to establish trust between the victim and helping agencies (see **Paragraphs 3.4 - 3.11**).
- 2.12 All frontline practitioners, agencies and service providers should be alert to the signs and indications of trafficking (see **Appendix 1**).

### **Differences between Human Trafficking and People Smuggling**

- 2.13 Human trafficking should be differentiated from people smuggling. The purpose of people smuggling is to move a person across a border and is regarded as a violation of state sovereignty. The purpose of human trafficking is to exploit a human being for gain or other benefits and is regarded as a violation of that person's freedom and integrity.
- 2.14 A number of factors can be identified which help distinguish between smuggling and trafficking. First, a victim's entry into a state can be legal or illegal in the case of trafficking, whereas smuggling is characterised by illegal entry. Second, trafficking can take place both within and across national frontiers, whereas international movement is required for smuggling. Third, in the case of adults, trafficking is carried out with the use of coercion and/or deception, whereas smuggling is not, indicating that the latter is a voluntary act on the part of those smuggled. Trafficking also involves subsequent exploitation of people. Victims of trafficking have rights and entitlements and are owed protections under international and domestic law.
- 2.15. In some cases, however, the distinction between a smuggled and trafficked person will be blurred and a person may have started out being smuggled into the UK but during the journey or on arrival could become a victim of trafficking. It is important to examine the end situation to determine whether someone has been smuggled or trafficked.

**Table 2: Key differences between Human Trafficking and People Smuggling**

*Source: UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners*

	<b>Human Trafficking</b>	<b>People Smuggling</b>
<b>Actions</b>	<ul style="list-style-type: none"> <li>Recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits</li> </ul>	<ul style="list-style-type: none"> <li>Procurement of illegal entry of a person into a country of which the person is not a national or permanent resident</li> </ul>
<b>Transnationality</b>	<ul style="list-style-type: none"> <li>Not required</li> </ul>	<ul style="list-style-type: none"> <li>Required</li> </ul>
<b>Consent</b>	<ul style="list-style-type: none"> <li>Irrelevant once the means (<b>Table 1</b>) are established</li> <li>For children, the consent is irrelevant regardless of the means</li> </ul>	<ul style="list-style-type: none"> <li>The smuggled person consents to the smuggling</li> </ul>
<b>Purpose</b>	<ul style="list-style-type: none"> <li>Exploitation which includes:                             <ol style="list-style-type: none"> <li>prostitution and other forms of sexual exploitation;</li> <li>forced labour and services;</li> <li>slavery and similar practices;</li> <li>involuntary servitude;</li> <li>removal of organs</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>For financial or other material benefit which is primarily derived from transportation to and facilitation of illegal entry into another country</li> </ul>

**European Union (EU) Directive on Preventing and Combating Trafficking in human beings and Protecting its Victims<sup>17</sup>**

2.16 The EU Directive builds on and supports existing international instruments designed to combat human trafficking, in particular the *Council of Europe*

<sup>17</sup> The European Union (EU) Directive on Human Trafficking can be accessed through: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>

*Convention on Action against Trafficking in Human Beings*, to which the UK is a signatory.

- 2.17 The EU Directive details how member States must act to prevent and combat human trafficking and protect all victims, and encompasses measures to define offences; penalties; jurisdiction; investigation and prosecution; assistance; support and protection for victims including children; special measures for witnesses; and the need for a national rapporteur or equivalent mechanism.

### **3. EARLY IDENTIFICATION OF VICTIMS AND ROLE OF FIRST RESPONDER**

#### **Early identification of victims**

- 3.1 The early identification of victims is key to ensuring an end to the abuse they suffer and to providing the assistance necessary to begin their healing and rehabilitation process.
- 3.2 Alongside police officers and immigration officials, HSC Trust staff and staff from other agencies and provider organisations may find themselves in contact with people who could be potential victims of human trafficking. These staff include doctors, nurses, social workers, allied health professionals and other front line staff such as outreach workers, home care workers, youth and community workers, social security officers, housing staff, health and safety inspectors, environmental health officers, trading standards officers, teachers and lecturers, employers, prison officers, transport staff working at airports, ports and train stations, bus drivers, taxi drivers and other providers of services.
- 3.3 The checklist at **Appendix 1** sets out indicators that may be present in a case involving human trafficking. All public facing agencies and service providers should be alert to these indicators to ensure the correct action is taken.

#### **What to do if human trafficking is suspected or disclosed**

- 3.4 Any practitioners, agencies or public facing service providers with grounds for concern that a person may be a victim of human trafficking should, without compromising the safety of the individual, refer what they know about the case to the PSNI (see **Appendix 5** for contact details). The PSNI will initiate the appropriate adult protection response which should include engaging legal advice for recovered potential victims (see **Paragraphs 5.7- 5.10**). Advice can also be sought from the UKHTC 24/7 tactical advisors (see **Appendix 2** for contact details). Failing to engage the PSNI at an early stage may present additional risks to potential victims.
- 3.5 Having established a concern that a person may be a victim of human trafficking, all practitioners, agencies or public facing service providers must be continuously mindful of the person's vulnerability and be attentive to their mental, emotional and psychological state. Every attempt should be made to establish a rapport, making victims feel comfortable and at ease. Language used and demeanour presented should be calm and non-judgmental. From the outset it may be necessary to engage the services of an interpreter. Where this is the case, the interpreter should be independent, trained, vetted, quality assured, culturally competent and able to communicate sympathetically and effectively with the victim. For example, given the potentially sensitive nature of evidence, female victims may be reluctant to speak in front of a male interpreter.
- 3.6 The role of the interpreter is vital. It is important at the outset of an interview for all concerned to understand that the role of the interpreter is to provide an

impartial, complete and confidential account. It is good practice to try to use the same interpreter throughout. The interpreter should never become a barrier to the communication process and if any concerns arise in this regard, the interview should be terminated and a new interpreter identified.

- 3.7 It is essential that evidence is collected in a professional manner by trained staff so as to minimise the risks of re-traumatising the victim and damaging any evidence. Staff should keep in mind the need to get as full an account as they can, while at the same time taking care not to cause undue distress. Care should also be taken to avoid the situation where the victim unnecessarily is asked to recount their experience so as to avoid the possibility of causing further harm. It is also important to note the significance of evidence provided at any stage by the victim. Often this evidence will be disclosed and used in other legal processes involving the victim, for example, asylum and criminal proceedings and therefore victims should be aware of this and they should be provided with specialist legal advice if required.
- 3.8 It is not uncommon for victims to feel both relief at having been identified and yet fear and suspicion toward an identifying member of staff. This is often linked to their fear of being returned to their trafficking situation, many having been told by their traffickers that the authorities would simply return them should they try to escape. It is also not uncommon for negative feelings (fear and suspicion) to give way to those of relief once the victim feels safe and comes to trust the identifying member of staff.
- 3.9 Victims of trafficking may be reluctant to go into the full facts of their case. This may be because of cultural barriers, or simply due to the traumatic or humiliating nature of the treatment they have suffered.
- 3.10 Accordingly, it is important that great sensitivity is shown to victims and appropriate safety measures are taken in terms of interview locations and transport arrangements for both victims and staff.
- 3.11 Staff need to be highly mindful of the risks to victims arising from detection and disclosure and their contact with services particularly if traffickers become aware of such contact.

### **Confidentiality**

- 3.12 Victims who are detected, present to services or disclose their situation should have an expectation of confidentiality. However, without placing barriers in the way of potential disclosure, it is important for practitioners, agencies and organisations to be open and honest with victims about the limits to maintaining confidentiality particularly if there are concerns about a risk of serious injury to the victim or other adults at risk, self-harm or child protection risks. If there are such concerns, information should be shared with the PSNI (see **Appendix 5** for contact details) or the HSC Trust (see **Appendix 6** for contact details). It is important that considerations and decisions regarding the disclosure and non-disclosure of information are recorded and staff should be able to explain and justify their decision.

- 3.13 Victims should be given adequate information about the options available, the opportunity to discuss these and kept fully apprised of what information will be shared, when, with whom and why.

### **Information sharing**

- 3.14 Victims will have been in situations where contact with outsiders is viewed with suspicion and in some circumstances such contact has endangered the health and safety of themselves or their loved ones. Careless handling of personal information greatly increases the risk of harm to the victim and potentially his or her family, damages confidence in the ability of agencies to help and perpetuates mistrust of the authorities. Consequently, the receiving and sharing of sensitive information of this nature, within and between agencies, must be handled sensitively, securely, with due diligence and in line with existing policies and protocols.
- 3.15 Interagency cooperation is essential in correctly identifying and properly supporting victims but the information that gets transferred within and between agencies must be kept secure at all times.

### **First Responder**

- 3.16 It should be noted that a number of agencies have been designated as First Responders but the role in relation to potential adult victims is, primarily, carried out by the PSNI in Northern Ireland.
- 3.17 The First Responder will complete the NRM Report Form and submit it to the UK Human Trafficking Centre (UKHTC)<sup>18</sup> for progression through the NRM framework (see **Chapter 4** and **Appendix 3**). Referral to the NRM is voluntary and can happen only if the potential victim gives their permission by signing the NRM Report Form.
- 3.18 All completed NRM Report Forms are sent to the UKHTC in the first instance. The UKHTC will then determine which Competent Authority (CA) will deal with the case.

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<sup>18</sup> Information about the work of the UKHTC can be accessed at <http://www.soca.gov.uk/about-soca/about-the-ukhtc>



## 4. THE NATIONAL REFERRAL MECHANISM AND COMPETENT AUTHORITIES

### The National Referral Mechanism (NRM)<sup>19</sup>

- 4.1 The NRM was set up as part of the UK's ratification of the Convention against Trafficking. It is a multiagency framework for identifying victims of trafficking and ensuring they receive the appropriate support where necessary. The NRM is designed to make it easier for all the different agencies (e.g. PSNI, UKBA, HSC, NGOs) that could be involved in a trafficking case to co-operate; to share information about potential victims; and to facilitate their access to advice, accommodation and support.
- 4.2 The NRM is also the mechanism through which the UKHTC collects data about victims which helps build a clearer picture about the scope of human trafficking in the UK.
- 4.3 To be referred to the NRM, potential victims of trafficking must first be referred to one of the UK's two Competent Authorities (CAs). This initial referral is handled by the First Responder in accordance with the process outlined in **Chapter 3** and will be made in the first instance to the UKHTC who will decide which CA will deal with the case and will forward the papers if needed.

### The NRM Report Form

- 4.4 The National Referral Mechanism Report Form for potential adult victims of trafficking should be used to make a NRM referral to the appropriate CA. A sample of the NRM Report Form with Guidance Notes is included as **Appendix 3**. The most current version of the NRM Report Form should be used and can be accessed through:  
<http://www.homeoffice.gov.uk/publications/crime/referral-forms-human-trafficking/>
- 4.5 On completion, the NRM Report Form should be returned in the first instance to the UKHTC who will decide which CA will deal with the case and will forward the papers if needed.
- 4.6 Completion of the NRM Report Form is the responsibility of the First Responder. In the case of adult victims this will usually be the PSNI but may be any First Responder. The target timescale for the submission of the NRM report is 48 hours from the identification of the potential victim of trafficking. Additional information may be submitted at a later stage. The CA will normally contact the First Responder in advance of making the "conclusive grounds" decision to check if there is any additional information to be considered.
- 4.7 In tandem with the NRM referral a separate immigration or asylum application claim may be initiated. It is essential therefore that a solicitor is engaged for the recovered victim at the earliest possible opportunity.

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<sup>19</sup> See also: <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>

- 4.8 **Chart 1** (page 16) outlines the NRM process for dealing with adults where human trafficking is suspected or claimed.

### **The Competent Authorities (CAs)**

- 4.9 In the UK, the CAs are the UKHTC, which is part of the Serious Organised Crime Agency (SOCA)<sup>20</sup>, and the UKBA<sup>21</sup> – (see **Appendix 2** for contact details). The UKHTC considers cases involving UK or EEA Nationals. The UKBA considers cases where trafficking is raised as part of an asylum claim or in the context of another immigration process.
- 4.10 Once a referral has been formally made, trained experts in the CA will assess the case and make a decision on whether an individual is a victim of trafficking. There are two key steps in this process.

### **“Reasonable Grounds” Decision**

- 4.11 The CA will determine, on the basis of information provided through the NRM and all other relevant sources, whether the individual meets “reasonable grounds” to be treated as a victim of human trafficking. The expectation is that this decision will be made within 5 working days from receipt of referral.
- 4.12 The threshold at the “Reasonable Grounds” stage for the Competent Authority is “From the information available so far I believe but cannot prove” that the individual is a potential victim of trafficking. Where the decision is affirmative, then the potential victim will enter the next stage of the process and be eligible for a minimum 45 calendar days recovery and reflection period. This may be extended in some circumstances. Where the decision is negative, the victim may need access to legal advice as there is no right of appeal and the decision can only be challenged through Judicial Review. **Chapter 8** identifies sources of information and support.
- 4.13 During the recovery and reflection period he or she is allowed to remain in the UK and is entitled to a range of support services. The recovery and reflection period also provides potential victims the opportunity to decide whether they wish to co-operate with a law enforcement investigation. Also during this period, the Competent Authority will gather evidence to enable the decision to be made. If it accepted that the person has been trafficked, the Competent Authority may grant a period of discretionary leave of up to 12 months. *Home Office Circular 2/2006*<sup>22</sup> outlines the procedures for requesting leave to remain when a potential victim agrees to co-operate with law enforcement for prosecution purposes. Confirmation that the person is required by the police to remain in the UK is provided to the Competent Authority by the Officer in

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<sup>20</sup> Information about the work and of SOCA can be accessed through: <http://www.soca.gov.uk/>

<sup>21</sup> Information about the work of the UKBA can be accessed through: <http://www.ukba.homeoffice.gov.uk>

<sup>22</sup> *Home Office Circular 2/2006* can be accessed at: <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2006/002-2006/>

Charge of the investigation. Potential victims are under no obligation to cooperate with law enforcement. Where the potential victim chooses not to cooperate, the Competent Authority may still decide to issue a Residence Permit in recognition of the personal circumstances of the potential victim. Some potential victims may agree to cooperate with law enforcement but may arrange to do this from their country of origin and therefore are not required by the police to remain in the UK.

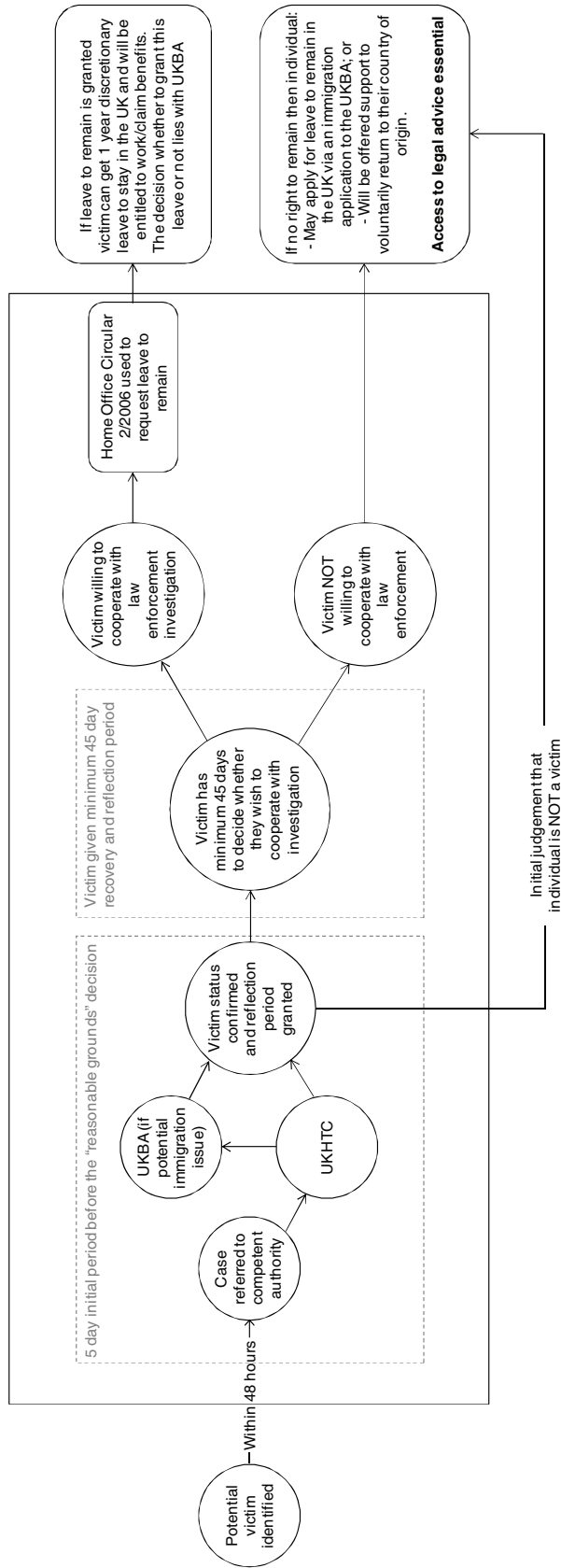
- 4.14 Being a victim does not entitle someone to remain in the UK indefinitely. Decisions on whether a potential victim can or cannot remain in the UK are made on a case by case basis, dependant on individual circumstances.
- 4.15 The UK Border Agency will also consider any applications for asylum made during the recovery and reflection period at the time that the claim is made.

#### **“Conclusive Grounds” Decision**

- 4.16 Following a positive “Reasonable Grounds” decision, the CA is required to make a second identification decision to conclusively decide if the individual is a victim of trafficking. The expectation is that this “Conclusive Grounds” Decision will be made within 45 calendar days and during that time the CA will gather further information relating to the referral from the First Responder and other agencies. This additional information will be used to make the conclusive decision when the case manager’s threshold is that on the balance of probability “it is more likely than not” that the individual is a victim of human trafficking.
- 4.17 If the referred person is conclusively identified as a victim of human trafficking, what happens next may depend on his or her wishes. The victim must be provided with as much information as possible, in the most appropriate format, to fully understand all their options thereby informing their decision-making. Where the victim of trafficking does not qualify to remain in the UK, subject to Article 12 of the Convention Against Trafficking, the expectation is that they return to their own country.



**Chart 1: NRM Process for dealing with adults where human trafficking is suspected or claimed**



**Source:** Adapted from Organised Crime Task Force (2010). *Review of the Northern Ireland Pilot Scheme for Providing Support to Victims of Human Trafficking*

## 5. SUPPORT FOR RECOVERED VICTIMS

- 5.1 DoJ currently has a contract with Migrant Help together with their delivery partner Women's Aid Federation (NI), to provide accommodation and a range of support services for potential adult victims of human trafficking during the period of recovery and reflection. Migrant Help deals with adult male victims and, in certain circumstances, adult female victims. Women's Aid Federation (NI) deals with adult female victims – see **Appendix 4** for contact details. This support is available until the “conclusive grounds” decision has been issued by the CA.
- 5.2 The support available through the DOJ contract includes:
- (i) safe accommodation;
  - (ii) one-to-one support by experienced support workers;
  - (iii) help with living/travel costs;
  - (iv) help to access healthcare;
  - (v) signposting to immigration advice;
  - (vi) signposting to independent legal advice and advice on eligibility for compensation;
  - (vii) help to access counselling or other therapeutic services; and
  - (viii) interpreter/translation services.
- 5.3 As outlined above, the support provided by Migrant Help and Women's Aid Federation (NI) includes helping the victims to access health care, counselling or other therapeutic services. Where there are likely to be ongoing support needs, there should be early liaison between Migrant Help/Women's Aid Federation (NI) and the relevant HSC Trust with a view to identifying how these might best be met.
- 5.4 If however, at the “reasonable grounds” or “conclusive grounds” stage, the CA concludes that the person is not considered a victim of trafficking, normal immigration procedures will apply in the case of Non-EEA Nationals. This can be a critical time for Non-EEA nationals, who may become subject to immigration enforcement, and therefore specialist immigration advice is essential. In the case of EEA Nationals, they may be in a position to return home or to exercise their Treaty rights<sup>23</sup> in the UK. Requests for access to health and social care assistance by persons who are not considered to be

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<sup>23</sup> This refers to the *Treaty of Rome 1957* (as amended by subsequent Treaties) which established the European Community and the rights under that Treaty, which apply to citizens of the EEA. These rights enable citizens of other EEA countries to live and work in the UK provided they will be self-sufficient (i.e. not a burden on the social assistance system)

trafficked victims will need to be considered by the HSC Trust in the context of the relevant legislation and guidance.

- 5.5 Where a family group is recovered and the parent or other responsible adult with whom a child has been living has been a victim of human trafficking, the family's needs will be met under the provisions of the *Children (Northern Ireland) Order 1995*<sup>24</sup> (the Children Order) which relate to support for children in need and their families. In these situations there will be an interface with the procedures and services set out in *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*.<sup>25</sup> It is important that family members, where it is safe and appropriate to do so, are fully involved and kept aware of decisions made with regard to their support and care.
- 5.6 **Chapter 8** sets out contact details for some useful sources of information and support.

### Access to independent legal advice

- 5.7 Non-EEA Nationals who are identified as victims or potential victims of trafficking will need to be aware of immigration issues and the provisions for seeking asylum, humanitarian protection or other immigration application in the UK, as well as rights and other considerations which may be pertinent to their circumstances.
- 5.8 After having explained the advantage of seeking legal advice in relation to these issues, Migrant Help/Women's Aid Federation (NI) should, with the person's consent and as a matter of urgency, arrange for appropriate legal representation.
- 5.9 Migrant Help/Women's Aid Federation (NI) should liaise with the recovered victim's solicitor who will gather relevant information and, where necessary, lodge representation with the UKBA. They should also ensure that the recovered victim's solicitor is aware of all impending interviews between UKBA and/or the PSNI and the recovered victim in relation to trafficking, asylum and other immigration matters and should at all stages co-operate in the provision of timely information to assist the recovered victim's case. In all interviews conducted by the UKBA, the recovered victim should be accompanied by his or her Migrant Help/Women's Aid Federation (NI) support worker unless it has been agreed beforehand that the solicitor should attend the interview.
- 5.10 Where a recovered victim is being interviewed by the PSNI in relation to a criminal investigation into a trafficking allegation, he or she should, as a matter of good practice, be accompanied by a solicitor. Some victims may have more

<sup>24</sup> The Children Order can be accessed at:  
<http://www.legislation.gov.uk/nisi/1995/755/contents>

<sup>25</sup> *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking* can be accessed at:  
[http://www.dhsspsni.gov.uk/oss\\_working\\_arrangements\\_for\\_the\\_welfare\\_safeguarding\\_of\\_child\\_victims\\_of\\_human\\_trafficking.pdf](http://www.dhsspsni.gov.uk/oss_working_arrangements_for_the_welfare_safeguarding_of_child_victims_of_human_trafficking.pdf)

than one solicitor acting in their case, for example an immigration adviser, a criminal defence solicitor or a family solicitor. Issues may arise during the course of the interview which could have implications for the recovered victim's immigration status and/or outstanding application with UKBA. Interpreting services will also need to be provided as required and the need for the presence of an "appropriate adult"<sup>26</sup> considered.

### **Assessment and management**

- 5.11 Migrant Help/Women's Aid Federation (NI), with input from the HSC Trust as necessary, will have the key role in the assessment and management with regard to adults who have been victims or are potential victims of trafficking. Risk assessment and management should be undertaken as part of each individual's ongoing support plan and will need to take account of risk factors associated with human trafficking including anxieties about their future, issues arising from any criminal investigation and other risks identified by the PSNI. This may include the potential risk of the victim contacting their trafficker. Cognisance also needs to be taken of the potential risk that traffickers may pose to staff, for example, seeking to intimidate or influence. In addition, the risk assessment should include considerations of any potential risks posed by the victim to other recovered victims or children. Where there is uncertainty about the age of the victim, particularly in relation to concerns that a young person may be younger or older than stated, an age assessment should be undertaken by two social workers, one of whom must be trained in conducting Merton-compliant age assessments of young people. The other should preferably be a social worker familiar with the victim's case or competent in an area of potential victim need, for example, mental health, (see **Paragraphs 7.11 – 7.14**) as part of the risk management strategy.
- 5.12 **The location of a recovered victim of human trafficking should not be divulged to any enquirers** until the PSNI has conducted relevant checks and is in a position to offer advice as to the nature of the contact. Exceptions to this provision will include the recovered victim's solicitor or any other known professional essential to the plan for the recovered victim's health and well-being. Providers of support services or any professional working with a recovered victim should immediately notify the PSNI of anyone else who attempts to contact the recovered victim by presenting as employers, relatives or friends. Where the recovered victim is in possession of a mobile phone, this may need to be retained by the PSNI in order to protect the recovered victim and/or secure evidence in the context of the investigation.

### **Recovered victims who go missing**

- 5.13 Support service providers should seriously consider the risk that victims of human trafficking may go missing and take this into account in planning their

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<sup>26</sup> MindWise has been contracted by the DoJ to deliver the Northern Ireland Appropriate Adult Scheme. The scheme aims to protect and safeguard the rights of young people and mentally vulnerable adults who are detained by the Police. The scheme is accessible to every PSNI station throughout Northern Ireland. More information is available through the MindWise website at: <http://www.mindwisenv.org/>



care and support package. A recovered victim who goes missing should be immediately reported to the PSNI and the recovered victim's solicitor, where one has been appointed.

## **6. THE ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)**

- 6.1 The PSNI has a key role in relation to the prevention and detection of human trafficking, the dismantling and prosecution of the organised crime gangs that may be involved, and in the recovery and protection of victims. Of itself, human trafficking is a serious crime; however victims may also have been subjected to other offences during the different stages of their journey and period of exploitation, for example, false imprisonment, sexual or physical violence and verbal threats. Victims of human trafficking may be identified as part of another criminal investigation.

### **Contact and liaison arrangements**

- 6.2 In view of the links between trafficking, crime and potentially international organised crime, the PSNI Crime Operations Department or District PSNI as appropriate (see **Appendix 5** for contact details) will be required to determine the appropriate way forward in the case of each operation and suspected victim. This will include whether or not to invoke the procedures established under *Safeguarding Vulnerable Adults* and the associated *Protocol for Joint Investigation*. In some situations, the PSNI may need to take immediate action to remove the person to a safe place outside Northern Ireland. PSNI may engage with Migrant Help to facilitate this.
- 6.3 Where there is a planned operation or investigation that would benefit from co-working, the PSNI will contact the relevant HSC Trust's Designated Human Trafficking Officer or Out-of-Hours Emergency Service as appropriate – see **Appendix 6** for contact details. Where possible, the PSNI should alert the relevant HSC Trust(s) 48 hours in advance of a planned operation or investigation. A strategy discussion or, where time permits, a strategy meeting, should take place to plan the joint adult protection investigation. This will include the arrangements, if any, for a social worker to be present during the police operation and the co-ordination of the assessment of the victim's needs in accordance with *Safeguarding Vulnerable Adults* and associated processes. In such situations it is anticipated that officers from the local Public Protection Unit (PPU) will form part of the PSNI operation. The PSNI will also alert the UKBA if the operation is concerned with adults who are Non-EEA Nationals. PSNI may also consider whether or not Migrant Help should attend a Police operation.
- 6.4 Where an operation or investigation is targeted on or recovers children or children in families, then the process will follow the guidance set out in *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*.

### **Adult protection procedures**

- 6.5 In all cases, the PSNI will accompany the recovered victim to a Medical and Interviewing Suite and, when it is safe and appropriate to do so, arrange for

transfer of the person to the appropriate service ie Migrant Help or Women's Aid Federation (NI).

*Note: A new specialist centre for victims of sexual assault will open in Northern Ireland at Antrim Area Hospital by March 2013. This new Sexual Assault Referral Centre, which will be known as SARC NI, will deliver services to children and adults who have been raped, sexually assaulted or sexually abused. Victims who have been trafficked for sexual purposes can receive care and support from the SARC and will have the opportunity to assist in a police investigation, which can include a forensic medical examination, if they so choose. SARC NI is a collaborative initiative involving the DHSSPS and PSNI. The centre will provide a range of specialist clinical assessment, intervention, and integrated care and support for the victim / survivor and their family, where applicable, in the aftermath of a sexual assault.*

- 6.6 In all cases where adult protection procedures are activated, the PSNI and the social worker allocated to the case will conduct joint inquiries and joint protocol interviewing in accordance with *Safeguarding Vulnerable Adults* and the associated *Protocol for Joint Investigation*. The PPU officers will support the PSNI Investigation Team in this process.
- 6.7 Access to suitably skilled and supported interpreting and translation services may be crucial to the investigation. Where necessary, the PSNI will make these services available to assist the joint inquiry/investigation process.

### **Medical and forensic procedures and consent**

- 6.8 The PSNI forensic medical officer may, with the recovered victim's consent, conduct a medical examination to obtain evidence to assist the investigation. Where possible, this medical examination should be co-ordinated with the assessment of any healthcare needs so as to reduce the impact on the recovered victim and should follow best practice, for example, in conducting medical examinations for rape and sexual assault.
- 6.9 The PSNI may, for protection purposes, also seek the recovered victim's consent to the provision of a non-invasive DNA sample in order to aid identification in the event that he or she goes missing and is re-trafficked under another identity. The *Human Tissue Act 2004* (the Human Tissue Act) requires that qualifying consent<sup>27</sup> must be provided for the taking of a DNA sample and the use of the sample must be for a specified purpose as set out in Schedule 4 to the Human Tissue Act. Under paragraph 5(1) of Schedule 4, use of the results of the analysis of DNA is lawful where it is for the prevention or detection of crime. Under paragraph 5(2) of Schedule 4, detecting crime includes establishing by whom, for what purpose, by what means and generally in what circumstances any crime was committed.

<sup>27</sup> Qualifying consent is consent that fulfils the requirements of the Human Tissue Act and therefore allows DNA analysis to be carried out without committing an offence. Schedule 4 to the Human Tissue Act sets out who can give qualifying consent

- 6.10 With regard to issues of consent to the above procedures, adults are presumed in law to be competent to give consent for themselves for their own healthcare and associated procedures, including the provision of a DNA sample.<sup>28</sup> However they must also have the capacity (be competent) to take a particular decision i.e. they must be able to comprehend and retain information material to the decision, especially as to the consequences of having or not having the intervention in question. They must also be able to use and weigh up this information in the decision making process.
- 6.11 If the recovered victim is judged to lack capacity, it will be lawful to provide necessary medical treatment which is in the “best interests” of the adult. The House of Lords previously has suggested that action taken “to preserve the life, health or well-being” of an individual will be in their best interests, and subsequent court judgements have emphasised that an individual’s best interests go beyond their medical interests to include much wider welfare considerations, such as their psychological health, well-being and quality of life.<sup>29</sup> However, use of best interests for medical treatment does not cover the taking of DNA.
- 6.12 The experience of human trafficking and subsequent exploitation and, indeed the process of recovery, may impact on the mental health of the recovered victim to the extent that the provisions of the *Mental Health (Northern Ireland) Order 1986*<sup>30</sup> are engaged. Where the use of compulsion is considered necessary, PSNI should liaise with the relevant HSC Trust(s) to ensure that such measures are appropriately and sensitively engaged; this will require input by an Approved Social Worker.<sup>31</sup> DHSSPS has provided interim guidance on the principles to be applied by those involved in taking decisions about an individual’s care or treatment that may result in the deprivation of that individual’s liberty.<sup>32</sup>

### **Completion of the NRM Report Form**

- 6.13 The PSNI, in the role of First Responder, will be the lead agency for the purpose of completing the NRM Report Form in respect of each recovered victim. The First Responder, when completing the NRM Report Form, may need to consult with other agencies in order to provide as much relevant

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<sup>28</sup> See *Human Tissue Authority Code of Practice 1 – Consent (HTA, 2009)* which can be accessed through: <http://www.hta.gov.uk/policiesandcodesofpractice/codesofpractice.cfm>

<sup>29</sup> DHSSPS consent guides for Healthcare Professionals and Social Workers, Social Care Staff and Students can be accessed through: [http://www.dhsspsni.gov.uk/public\\_health\\_consent](http://www.dhsspsni.gov.uk/public_health_consent)

<sup>30</sup> It should be noted that Mental Health legislation in Northern Ireland has been subject to extensive review and is in the process of change

<sup>31</sup> Approved Social Workers are appointed to carry out the functions given to them under the *Mental Health (Northern Ireland) Order 1986*; they must be approved as having appropriate competence in dealing with people who are suffering from a mental disorder

<sup>32</sup> The *DHSSPS Deprivation of Liberty Safeguards (DOLS) – Interim Guidance* can be accessed at: <http://www.dhsspsni.gov.uk/revised-circular-deprivation-of-liberty-safeguards-october-2010.pdf>

information as possible. A sample copy of the NRM Report Form is included at **Appendix 3**. However, it can be accessed online through:

<http://www.homeoffice.gov.uk/publications/crime/referral-forms-human-trafficking/>

- 6.14 On completion, and with the consent of the potential victim, the NRM Report Form should be sent to the UKHTC.

#### **Recovered victims who go missing**

- 6.15 Recovered victims who subsequently go missing should be reported to the PSNI by the provider of support services, currently Migrant Help/Women's Aid Federation (NI). Where there are concerns that a trafficked adult is being moved within the UK or to the Republic of Ireland, the PSNI, in discussion with others as appropriate, will consider whether any actions should be taken by them to alert UK police forces or An Garda Síochána. The UKBA should also be provided with the details of any recovered victim who has gone missing in order that UKBA officers at ports of entry may be alerted.

#### **PSNI inquiries and criminal investigations**

- 6.16 The PSNI will maintain close contact with the relevant service providers and HSC Trust, where it is involved, in relation to the progress of further relevant enquiries or criminal investigations and will provide any information necessary to assist these organisations in safeguarding the recovered victim.
- 6.17 Where the recovered victim is recognised by the CA as a victim of trafficking and has agreed to help the PSNI with its investigations, the PSNI may apply for the adult to be granted leave to remain in the UK on this basis. *Home Office Circular 2/2006*<sup>33</sup> is used for this purpose.

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<sup>33</sup> *Home Office Circular 2/2006* can be accessed at:

<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2006/002-2006/>

## 7. THE ROLE OF HEALTH AND SOCIAL CARE (HSC) TRUSTS

- 7.1 HSC Trusts have a general duty to promote an integrated system of health and social care designed to secure improvement in the physical and mental health and social well-being of people in Northern Ireland and in the prevention, diagnosis and treatment of illness.
- 7.2 It should be noted that HSC Trust competencies in relation to victims of trafficking differ in terms of child and adult victims. All forms of child trafficking should be, first and foremost, recognised as child abuse and therefore requires all the existing multi-agency policies and procedures around child protection. However, many adult victims may have no recourse to public funds. This does not mean they should not receive health and social care (see **Paragraph 7.19**). In such cases, each HSC Trust must take the decision as to the degree of social care support that it will provide on a discretionary basis in light of its role in promoting health and wellbeing in its area. Responding to the healthcare needs of trafficked adults is dealt with in **Paragraphs 7.8 – 7.10**.

### Contact and liaison arrangements

- 7.3 All HSC Staff and particularly those engaged in adult protection work and Out-of-Hours Teams should be familiar with the indicators of human trafficking (see **Appendix 1**) and the procedures set out and referenced in this guidance.
- 7.4 When notified of an impending operation or investigation that would benefit from co-working, the relevant HSC Trust's Designated Human Trafficking Officer will make appropriate arrangements with the PSNI to assist the operation or investigation (see **Appendix 6** for contact details). The HSC Trust and the PSNI should agree a strategy to plan the joint investigation and the assessment of the recovered victim's needs. Where issues of consent arise during the investigation(s), the provisions set out in **Paragraphs 6.10 – 6.12** of this guidance should be noted. Where an operation or investigation is targeted on or recovers children or children in families, then the process will follow the guidance set out in *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*.
- 7.5 In the case of any adult who comes to the attention of the HSC Trust as a potential victim of trafficking and who is not already known to the PSNI, the Trust should immediately notify the Crime Operations Department or District PSNI or the local PPU – see **Appendix 5** for contact details.
- 7.6 In all cases where adult protection procedures are activated, the HSC Trust and the PSNI will conduct joint inquiries and joint protocol interviewing in accordance with *Safeguarding Vulnerable Adults* and the associated *Protocol for Joint Investigation*. Where necessary, the PSNI will make interpreting services available, and any other victim support service needed to assist the joint adult protection inquiry/investigation process.

## Support for recovered victims

7.7 Arrangements for the support of recovered victims are set out in **Chapter 5** of this guidance. While HSC Trusts may have a more limited role in the recovery and initial support and rehabilitation of adult victims, their Designated Human Trafficking Officer should:

- facilitate access to social workers who have been trained in conducting Merton-compliant age assessment of young people (see **Paragraphs 7.11 – 7.14**);
- on the basis of assessed need, seek to facilitate access across the full range of health and social care services the HSC Trusts provides;
- where there are likely to be ongoing support needs, enable early liaison between Migrant Help/Women’s Aid Federation (NI) and the HSC Trust with a view to identifying how these might best be met.

## Healthcare needs of recovered victims

7.8 As a consequence of the *Provision of Health Services to Persons not Ordinarily Resident (Amendment) Regulations (Northern Ireland) 2008*,<sup>34</sup> Northern Ireland is now compliant with the requirements of the Convention against Trafficking in relation to the healthcare needs of victims during the recovery and reflection period. General healthcare needs, i.e. registration with and access to GP services and routine treatment should be arranged by Migrant Help/Women’s Aid Federation (NI). If an adult has emergency medical needs, Accident and Emergency units at hospitals will provide such treatment. Please note **Paragraphs 6.10 – 6.12** with regard to issues of consent.

7.9 In view of the life circumstances to which they have been potentially exposed, all recovered victims should be offered screening for Hepatitis B, Hepatitis C and HIV infection and, where appropriate, should be encouraged to avail of sexual health screening. Where the adult is consenting, Migrant Help/Women’s Aid Federation (NI) should make contact with the relevant Genitourinary Medicine (GUM) /Sexual Health Clinics clinic to arrange an appointment (see **Appendix 7** for contact details of local clinics).

7.10 Adults who have been trafficked may also have mental health needs, and may experience post-traumatic stress symptoms during the recovery and reflection period and long afterwards. In such cases, Mental Health Services or other relevant counselling and support services should be sought for the victim (see also **Paragraph 6.12**).

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<sup>34</sup> The 2008 Regulations can be accessed at:  
<http://www.legislation.gov.uk/nisr/2008/377/contents/made>

The 2005 Regulations can be accessed at: <http://www.legislation.gov.uk/nisr/2005/551/contents/made>

### **Age disputed individuals**

- 7.11 Some individuals may not be in possession of official documentation confirming their date of birth or may have been told to lie about their age to evade attention from the authorities. A young person under the age of 18 years found in a brothel, for example, may have been told to state that he/she is an adult. Other young people who are over the age of 18 may have been told to claim they are under 18 years in order to secure the protection of the HSC Trust and the more favourable outcomes for unaccompanied children in immigration decisions.
- 7.12 The Convention against Trafficking states “when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age”. Therefore, where there is concern that a young person who claims to be an adult is suspected of being under the age of 18 years, the young person must be treated as a child and the guidance set out in *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking* must be followed until information to the contrary becomes available.
- 7.13 Where necessary, in the case of young people who are suspected of being over the age of 18 years, or a youthful adult claims to be under 18 years, an age assessment should be carried out by the HSC Trust at the earliest opportunity. HSC Trusts should have ready access to social workers who have been trained in conducting Merton-compliant age assessment of young people. Age assessment should be undertaken by two social workers, one of whom must be Merton trained and the other, preferably, the young person’s social worker or a social worker who is familiar with the case.
- 7.14 The PSNI will be responsible for arranging accommodation for any young victim assessed by the Trust to be aged 18 years or over through Migrant Help/Women’s Aid Federation (NI) – see **Chapter 5**. Children who are believed to have been trafficked will need to be accommodated by the HSC Trust under Article 21 of the Children Order and the full regulatory provisions and guidance in respect of looked after children will apply.

### **Families with children who have been trafficked**

- 7.15 Where a child is recovered as part of a family group and the child’s parent or other responsible adult with whom the child has been living has been a victim of trafficking, the family’s immediate needs will be met under the Children Order provisions relating to support for children in need and their families. The relevant guidance is set out in *Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking*.



### Persons confirmed as victims of trafficking

- 7.16 If the CA conclusively finds that a person is a victim of trafficking then, depending on the circumstances, a Non-EEA National may be granted discretionary leave to remain in the UK in the form of a one year renewable Residence Permit.
- 7.17 In the case of an EEA National who does not wish to return to his or her country of origin he or she may exercise rights under the European Convention on Human Rights (ECHR)<sup>35</sup> and/or Treaty rights<sup>36</sup> in the UK.
- 7.18 Where trafficked victims are able to exercise Treaty rights or have been given discretionary leave to remain or other immigration status, they will normally be able to apply for relevant social security benefits and housing assistance and **will be entitled to access health and social care.**
- 7.19 The HSC Trust may be asked by Migrant Help/Women's Aid Federation (NI) to assist with the rehabilitation of trafficked victims to independent living and, in view of the potential continuing vulnerability of trafficked victims, the HSC Trust should respond accordingly. **It will not be necessary for the HSC Trust to consider entitlement to access health and social care in the case of confirmed victims of trafficking who have been given discretionary leave to remain in the UK, refugee status or humanitarian protection.** However, assessment under the care management process will determine their eligibility to receive a care service.

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<sup>35</sup> These are rights set out in the ECHR and enshrined in UK law by the *Human Rights Act 1998*. Not all Convention rights operate in the same way. Some are 'absolute' while others are 'limited' or 'qualified' in nature

<sup>36</sup> This refers to the *Treaty of Rome 1957* (as amended by subsequent Treaties) which established the European Community and the rights under that Treaty, which apply to citizens of the EEA. These rights enable citizens of other EEA countries to live and work in the UK provided they will be self-sufficient (i.e. not a burden on the social assistance system)

## 8. SOURCES OF INFORMATION AND SUPPORT

Practitioners working with victims of trafficking may find the following contacts and sources of information helpful. Consent should be obtained for all referrals.

### 8.1 Competent Authorities for victims of trafficking in Northern Ireland

**The United Kingdom Human Trafficking Centre (UKHTC)** is a multiagency centre that provides a central point for the development of expertise and cooperation in relation to the trafficking of human beings. It works with other stakeholders from the governmental, non-governmental and inter-governmental sectors in the UK and abroad.

Web address: <http://www.soca.gov.uk/about-soca/about-the-ukhtc/contact-ukhtc>

Telephone: 0844 778 2406

**The United Kingdom Border Agency (UKBA)** is responsible for securing the UK border and controlling migration in the UK. It manages border control and enforces immigration and customs regulations. It also considers applications for permission to enter or stay in the UK; citizenship; and asylum. Competent Authority functions under the Convention against Trafficking are discharged by the local Northern Ireland office of the UKBA.

Web address: <http://www.ukba.homeoffice.gov.uk/>

Telephone: (028) 9019 1056

8.2 **Migrant Help** is a charity which aims to be a leading provider of quality support to migrants in distress. It is committed to providing high quality support and advice services. The DoJ currently contracts with Migrant Help for the provision of accommodation and support, during the recovery reflection period, to male victims and, in certain circumstances, female victims of human trafficking recovered in Northern Ireland (see also 8.30).

Web address: <http://www.migranthepline.org.uk>

Telephone: 077 6666 8781 or 013 0420 3977

e mail: [mhl@migranthepline.org](mailto:mhl@migranthepline.org)

8.3 **The Women's Aid Federation (NI)** is the lead voluntary organisation in Northern Ireland addressing domestic violence and providing services for women and children. Under the contract between DoJ and Migrant Help, Women's Aid Federation (NI) provides accommodation and support, during the reflection period, to female victims of human trafficking recovered.

Web address: <http://www.womensaidni.org/>

Telephone: 0800 917 1414 (24-hour domestic violence helpline)

E-mail: [24hrsupport@dvhelpline.org](mailto:24hrsupport@dvhelpline.org)

**Text: SUPPORT to 07797 805 839**

- 8.4 **Advice NI** is a membership organisation that exists to promote, support and develop the independent advice sector across Northern Ireland. Its mission is to develop an independent advice sector that provides the best possible advice to those who need it most.

Web address: <http://www.adviceni.net/>

Telephone: (028) 9064 5919

Fax: (028) 9049 2313

Contact details for local Advice NI members can be accessed through the web address above.

- 8.5 **Ballymena Inter-Ethnic Forum (BIEF)** offers support and guidance to ethnic communities in Northern Ireland and to promote acceptance of different cultures.

Web address:

<http://www.supportingcommunitiesni.org/directory/default.aspx?directoryid=4b8fe2a7-72eb-41c3-99e8-08378949021f>

Telephone: (028) 2564 3605

E-mail: [admin@bief.org.uk](mailto:admin@bief.org.uk)

- 8.6 **British Red Cross** is a volunteer-led humanitarian organisation that helps people in crisis, whoever and wherever they are. It enables vulnerable people at home and overseas to prepare for and respond to emergencies in their own communities. When the crisis is over, it helps people recover and move on with their lives.

Web address: <http://www.redcross.org.uk/>

Telephone: (028) 9073 5350

- 8.7 **Bryson One Stop Services for Asylum Seekers** is for asylum seekers supported by the National Asylum Support Service (NASS) as well as successful asylum applicants who need help in accessing mainstream services and accommodation. Advice work covers a range of specialist topics including access to NASS support, the asylum application process, welfare benefits, employment and housing. The Service also advises clients facing problems such as racial harassment, domestic violence and destitution.

Web address: <http://www.mcrc-ni.org/>

Telephone: (028) 9043 9226

- 8.8 **Chinese Welfare Association** works to secure the future of the Chinese community in Northern Ireland within a framework of racial equality and enable all sections of the community to fully participate in both the development of the community and the wider society.
- Web address: <http://www.cwa-ni.org/>  
Telephone: (028) 9028 8277  
Fax: (028) 9028 8278
- 8.9 **Citizens Advice** helps people resolve their debt, benefits, housing, legal, discrimination, employment, immigration, consumer and other problems and is available to everyone regardless of race, gender, sexuality, age, nationality, disability or religion. Contact details for local Citizens Advice Bureaus can be accessed through the web address below.
- Web address: <http://www.citizensadvice.co.uk/>
- 8.10 **Craigavon Intercultural Programme (CIP)** is committed to supporting people from different cultural & ethnic backgrounds and seeks to be a catalyst in promoting innovation and opportunities for their community development. CIP offers practical assistance to both indigenous & new communities in promoting integration & encouraging full participation in society regardless of race/nationality.
- Web address: <http://www.craigavonintercultural.org/>  
Telephone: (028) 3839 3372  
E-mail: [info@craigavonintercultural.org](mailto:info@craigavonintercultural.org)
- 8.11 **EMBRACE** is a group of Christians working together to promote a positive response to people seeking asylum, refugees, migrant workers and minority ethnic people in Northern Ireland.
- Web address: <http://www.embraceni.org/>  
Telephone: (028) 9066 3145
- 8.12 **Homeplus NI Limited** aims to deliver services that would meet the immediate accommodation and support needs of vulnerable homeless people who were sleeping rough, particularly those in the Belfast and Greater Belfast areas. It works with the most vulnerable in our society who have become homeless and those who are sleeping rough, including foreign nationals, refugees, asylum seekers, and those without recourse to public funds.
- Web address: <http://www.homeplusni.org/>  
Telephone: (028) 9024 8521  
Email: [manager@homeplusni.org](mailto:manager@homeplusni.org)

- 8.13 The **International Organisation for Migration (UK)** IOM works to help ensure the orderly and humane management of migration, to promote international cooperation on migration issues, to assist in the search for practical solutions to migration problems and to provide humanitarian assistance to migrants in need, including refugees and internally displaced people.
- Web address: <http://www.iomlondon.org>  
Telephone: (020) 7233 0001
- 8.14 The **Law Centre (NI)** will normally provide representation in appeals before the Asylum and Immigration Tribunal and any further relevant challenges by way of judicial review or via the Court of Appeal and beyond, where necessary. The Law Centre concentrates on appeals from decisions refusing political asylum and will also represent in other immigration appeals from time to time but as a lower priority. It prioritises representation for asylum appeals, strategic cases, detained clients, foreign national prisoners and vulnerable clients subject to imminent removal. It also provides specialist legal advice for victims of trafficking.
- Web address: <http://www.lawcentreni.org>  
Telephone: (028) 9024 4401 (Belfast Office)  
(028) 7126 2433 (Western Area Office)
- 8.15 The **Law Society of Northern Ireland** is a professional body, which has the authority to discipline, educate and regulate practising solicitors in Northern Ireland. Among other things the Society has an online Solicitors Database which provides access to the contact details of firms and solicitors in the major cities, towns and villages in Northern Ireland.
- Web address: <http://www.lawsoc-ni.org/>  
Telephone: (028) 9023 1614  
Fax: (028) 9023 2606
- Note:** The Society cannot offer legal advice to the general public or deal with inquiries that properly should be placed with the person's own solicitor.
- 8.16 **Newry and Mourne Ethnic Minority Support Centre** is located at Newry Town Hall. The Centre is a partnership with the Wellbeing Action Partnership. It provides a comprehensive advice and support service for ethnic minority residents of the District on issues such as rights, access to services, benefits etc.
- Web address:  
[http://www.newryandmourne.gov.uk/community/Ethnic\\_Support.aspx](http://www.newryandmourne.gov.uk/community/Ethnic_Support.aspx)  
Telephone: (028) 3025 2544  
E-mail: [ethnicsupport@newryandmourne.gov.uk](mailto:ethnicsupport@newryandmourne.gov.uk)

8.17 **Northern Ireland Council for Ethnic Minorities (NICEM)** works to promote racial equality and human rights in Northern Ireland.

Web address: <http://www.nicem.org.uk/>  
 Telephone: (028) 9023 8645  
 Fax: (028) 9031 9485

8.18 **Northern Ireland Community of Refugees and Asylum Seekers (NICRAS)** aims to support the integration process of refugees and asylum seekers into local communities throughout Northern Ireland.

Web address: <http://www.nicras.btck.co.uk/>  
 Telephone: (028) 9024 6699  
 Fax: (028) 9024 8855  
 Email: [info@nicras.org.uk](mailto:info@nicras.org.uk)

8.19 **Missing People UK** is a voluntary organisation that provides support for missing children, vulnerable adults and families. It offers specialist advice and practical support as well as searching and securing publicity. Local Authorities (LAs) in England fund the Missing People's Missing from Care Team that provides a specialist service to LA children's social care when any of their 'looked after' children go missing. LA children's social care professionals can contact the Missing from Care Team.

Web address: <https://missingpeople.org.uk/>  
 Telephone: (020) 8392 4527 (Missing from Care Team)

8.20 The **NEXUS Institute (NEXUS)** offers counselling to survivors of childhood sexual abuse, victims of sexual violence including those who have experienced rape and sexual assault. Nexus has four offices across Northern Ireland, Belfast, L'Derry, Portadown and Enniskillen. Nexus also offers counselling from outreach centres throughout Northern Ireland.

Web address: <http://www.nexusinstitute.org/>  
 Telephone: Belfast - (028) 9032 6803  
 L'Derry - (028) 7126 0566  
 Portadown - (028) 3835 0588  
 Enniskillen - (028) 6632 0046

8.21 The **Rainbow Project** works to improve the physical, mental and emotional health of gay, bisexual and non-heterosexual men in Northern Ireland.

Web address: <http://www.rainbow-project.org>  
 Telephone: Belfast - (028) 9031 9030  
 L'derry - (028) 7128 3030

8.22 **Rape Crisis Network Ireland** provides counselling and support for survivors of sexual violence and abuse and those who support them.

Web address: <http://www.rcni.com>

Telephone: (028) 9032 9002

8.23 **Refugee Action** is an independent national charity working with refugees to build new lives in the UK. It provides practical advice and assistance for newly arrived asylum seekers and long-term commitment to their settlement through community development work. It also runs the Choices Assisted Voluntary Returns Service for Asylum seekers and refused Asylum seekers; families and children; people in the UK with no legal status (irregular migrants) and people with discretionary leave to remain.

Web address: <http://www.refugee-action.org.uk/>

Telephone: 0808 800 0007

Fax: (020) 7654 0696

E-mail: [info@refugee-action.org.uk](mailto:info@refugee-action.org.uk)

8.24 The **Salvation Army** extends a helping hand to those who are homeless, friendless and in need. Demonstrating Christian principles through practical support; offering unconditional friendship, and very practical help to people of all ages, backgrounds and needs.

Web address: <http://www.salvationarmy.org.uk/>

Telephone: (020) 7367 4500

E-mail: [info@salvationarmy.org.uk](mailto:info@salvationarmy.org.uk)

8.25 **Samaritans** aims to benefit society by improving people's emotional health in order to create a greater sense of well being. Apart from being a 24-hour source of support on the telephone, by e-mail, by letter or face to face, Samaritans also work in local communities.

Web address: <http://www.samaritans.org/>

Telephone: National Helpline: 08457 90 90 90

E-mail: [jo@samaritans.org](mailto:jo@samaritans.org)

Contact details for local branches can be accessed through the above web address.

8.26 **SEEDS** is a proactive diversity initiative created to address the challenges and opportunities of increased cultural and ethnic diversity in North West region of Northern Ireland.

Web address: <http://www.seeds.ie/>

Telephone: (028) 7137 0989

- 8.27 **Society of St Vincent de Paul** is a voluntary social service organisation committed to helping those in need, regardless of creed or lifestyle.  
Web address: <http://www.svp-ni.org/>  
Telephone: (028) 9035 1561  
E-mail: [info@svpni.co.uk](mailto:info@svpni.co.uk)
- 8.28 **South Tyrone Empowerment Programme (STEP)** seeks to enable those most vulnerable to marginalisation, disadvantage and exclusion, to develop the confidence and skills to be heard; to identify their own strengths and needs; to access the support and expertise to help them in finding solutions and advocating social change.  
Web address: <http://www.stepni.org/>  
Telephone: (028) 8775 0211  
E-mail: [info@stepni.org](mailto:info@stepni.org)
- 8.29 **Victim Support NI** is the charity which helps people affected by any type of crime. It provides emotional support, information and practical help to victims, witnesses and others affected by crime, including those seeking compensation through the criminal injuries compensation scheme.  
Web address: <http://www.victimsupportni.co.uk/>  
Telephone: Central Office – (028) 9024 4039  
Belfast Office – (028) 9024 3133  
Ballymena Office - (028) 2563 0784  
Derry/Londonderry Office - (028) 7137 0086  
Newry Office - (028) 3025 1321  
Omagh Office - (028) 8224 0012
- 8.30 The **Welcome Organisation** has been working in Belfast for the last 15 years to address the needs of people who are homeless or rough sleeping in the city. We aim to support people in making the move off the street, progressing towards independent living and alleviating isolation - providing a sense of belonging and community. Services provided and contact details can be accessed through:  
Web address: <http://www.welcomebelfast.org/>



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## **Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking**

### **APPENDICES**

1. United Nations - Human Trafficking Indicators
2. Competent Authorities Contact Details
3. Sample NRM Report Form (including Guidance Notes)
4. Organisations Providing Accommodation and Support for Trafficked Adults - contact details
5. Crime Operations Department/District PSNI, Public Protection Unit contacts
6. HSC contact details for trafficked adults
7. GUM/Sexual Health Clinics contact details
8. Links to related sites

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**APPENDIX 1**

**UNITED NATIONS - HUMAN TRAFFICKING INDICATORS**

Not all the indicators listed below are present in all situations involving trafficking in humans. Although the presence or absence of any of the indicators neither proves nor disproves that human trafficking is taking place, their presence should lead to investigation. Victims of trafficking in humans can be found in a variety of situations. You can play a role in identifying such victims

<p><b>GENERAL INDICATORS</b></p> <p>People who have been trafficked may:</p> <ul style="list-style-type: none"> <li>• Believe that they must work against their will</li> <li>• Be unable to leave their work environment</li> <li>• Show signs that their movements are being controlled</li> <li>• Feel that they cannot leave</li> <li>• Show fear or anxiety</li> <li>• Be subjected to violence or threats of violence against themselves or against their family members and loved ones</li> <li>• Suffer injuries that appear to be the result of an assault</li> <li>• Suffer injuries or impairments typical of certain jobs or control measures</li> <li>• Suffer injuries that appear to be the result of the application of control measures</li> <li>• Be distrustful of the authorities</li> <li>• Be threatened with being handed over to the authorities</li> <li>• Be afraid of revealing their immigration status</li> <li>• Not be in possession of their passports or other travel or identity documents, as those documents are being held by someone else</li> <li>• Have false identity or travel documents</li> <li>• Be found in or connected to a type of location likely to be used for exploiting people</li> <li>• Be unfamiliar with the local language</li> <li>• Not knowing their home or work address</li> <li>• Allow others to speak for them when addressed directly</li> <li>• Act as if they were instructed by someone else</li> <li>• Be forced to work under certain conditions</li> <li>• Be disciplined through punishment</li> <li>• Be unable to negotiate working conditions</li> <li>• Receive little or no payment</li> <li>• Have no access to their earnings</li> <li>• Work excessively long hours over long periods</li> <li>• Not have any days off</li> <li>• Live in poor or substandard accommodations</li> <li>• Have no access to medical care</li> <li>• Have limited or no social interaction</li> <li>• Have limited contact with their families or with people outside of their immediate environment</li> <li>• Be unable to communicate freely with others</li> <li>• Be under the perception that they are bonded by debt</li> <li>• Be in a situation of dependence</li> <li>• Come from a place known to be a source of human trafficking</li> <li>• Have had the fees for their transport to the country of destination paid for by facilitators, whom they must pay back by working or providing services in the destination</li> <li>• Have acted on the basis of false promises</li> </ul>	<p><b>CHILDREN</b></p> <p>Children who have been trafficked may:</p> <ul style="list-style-type: none"> <li>• Have no access to their parents or guardians</li> <li>• Look intimidated and behave in a way that does not correspond with behaviour typical of children their age</li> <li>• Have no friends of their own age outside of work</li> <li>• Have no access to education</li> <li>• Have no time for playing</li> <li>• Live apart from other children and in substandard accommodations</li> <li>• Eat apart from other members of the "family"</li> <li>• Be given only leftovers to eat</li> <li>• Be engaged in work that is not suitable for children</li> <li>• Travel unaccompanied by adults</li> <li>• Travel in groups with persons who are not relatives</li> </ul> <p>The following might also indicate that children have been trafficked:</p> <ul style="list-style-type: none"> <li>• The presence of child-sized clothing typically worn for doing manual or sex work</li> <li>• The presence of toys, beds and children's clothing in inappropriate places such as brothels and factories</li> <li>• The claim made by an adult that he or she has "found" an unaccompanied child</li> <li>• The finding of unaccompanied children carrying telephone numbers for calling taxis</li> <li>• The discovery of cases involving illegal adoption</li> </ul> <p><b>DOMESTIC SERVITUDE</b></p> <p>People who have been trafficked for the purpose of domestic servitude may:</p> <ul style="list-style-type: none"> <li>• Live with a family</li> <li>• Not eat with the rest of the family</li> <li>• Have no private space</li> <li>• Sleep in a shared or inappropriate space</li> <li>• Be reported missing by their employer even though they are still living in their employer's house</li> <li>• Never or rarely leave the house for social reasons</li> <li>• Never leave the house without their employer</li> <li>• Be given only leftovers to eat</li> <li>• Be subjected to insults, abuse, threats or violence</li> </ul>
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<p><b>SEXUAL EXPLOITATION</b></p> <p>People who have been trafficked for the purpose of sexual exploitation may:</p> <ul style="list-style-type: none"> <li>• Be of any age, although the age may vary according to the location and the market</li> <li>• Move from one brothel to the next or work in various locations</li> <li>• Be escorted whenever they go to and return from work and other outside activities</li> <li>• Have tattoos or other marks indicating "ownership" by their exploiters</li> <li>• Work long hours or have few if any days off</li> <li>• Sleep where they work</li> <li>• Live or travel in a group, sometimes with other women who do not speak the same language</li> <li>• Have very few items of clothing</li> <li>• Have clothes that are mostly the kind typically worn for doing sex work</li> <li>• Only know how to say sex-related words in the local language or in the language of the client group</li> <li>• Have no cash of their own</li> <li>• Be unable to show an identity document</li> </ul> <p>The following might also indicate that children have been trafficked:</p> <ul style="list-style-type: none"> <li>• There is evidence that suspected victims have had unprotected and/or violent sex</li> <li>• There is evidence that suspected victims cannot refuse unprotected and/or violent sex</li> <li>• There is evidence that a person has been bought and sold</li> <li>• There is evidence that groups of women are under the control of others</li> <li>• Advertisements are placed for brothels or similar places offering the services of women of a particular ethnicity or nationality</li> <li>• It is reported that sex workers provide services to a clientele of a particular ethnicity or nationality</li> <li>• It is reported by clients that sex workers do not smile</li> </ul> <p><b>LABOUR EXPLOITATION</b></p> <p>People who have been trafficked for the purpose of labour exploitation are typically made to work in sectors such as the following: agriculture, construction, entertainment, service industry and manufacturing (in sweatshops).</p> <p>People who have been trafficked for labour exploitation may:</p> <ul style="list-style-type: none"> <li>• Live in groups in the same place where they work and leave those premises infrequently, if at all</li> <li>• Live in degraded, unsuitable places, such as in agricultural or industrial buildings</li> <li>• Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing</li> <li>• Be given only leftovers to eat</li> <li>• Have no access to their earnings</li> <li>• Have no labour contract</li> <li>• Work excessively long hours</li> <li>• Depend on their employer for a number of services, including work, transportation and accommodation</li> <li>• Have no choice of accommodation</li> <li>• Never leave the work premises without their employers</li> <li>• Be unable to move freely</li> <li>• Be subject to security measures designed to keep them on the work premises</li> </ul>	<ul style="list-style-type: none"> <li>• Be disciplined through fines</li> <li>• Be subjected to insults, abuse, threats or violence</li> <li>• Lack basic training and professional licences</li> </ul> <p>The following might also indicate that people have been trafficked for labour exploitation:</p> <ul style="list-style-type: none"> <li>• Notices have been posted in languages other than the local language</li> <li>• There are no health and safety notices</li> <li>• The employer or manager is unable to show the documents required for employing workers from other countries</li> <li>• The employer or manager is unable to show records of wages paid to workers</li> <li>• The health and safety equipment is of poor quality or is missing</li> <li>• Equipment is designed or has been modified so that it can be operated by children</li> <li>• There is evidence that labour laws are being breached</li> <li>• There is evidence that workers must pay for tools, food or accommodation or that those costs are being deducted from their wages</li> </ul> <p><b>BEGGING AND PETTY CRIME</b></p> <p>People who have been trafficked for the purpose of begging or committing petty crimes may:</p> <ul style="list-style-type: none"> <li>• Be children, elderly persons or disabled migrants who tend to beg in public places and on public transport</li> <li>• Be children carrying and/or selling illicit drugs</li> <li>• Have physical impairments that appear to be the result of mutilation</li> <li>• Be children of the same nationality or ethnicity who move in large groups with only a few adults</li> <li>• Be unaccompanied minors who have been "found" by an adult of the same nationality or ethnicity</li> <li>• Move in groups while travelling on public transport: for example, they may walk up and down the length of trains</li> <li>• Participate in the activities of organised criminal gangs</li> <li>• Be part of large groups of children who have the same adult guardian</li> <li>• Be punished if they do not collect or steal enough</li> <li>• Live with members of their gang</li> <li>• Travel with members of their gang to the country of destination</li> <li>• Live, as gang members, with adults who are not their parents</li> <li>• Move daily in large groups and over considerable distances</li> </ul> <p>The following might also indicate that people have been trafficked for begging or for committing petty crimes:</p> <ul style="list-style-type: none"> <li>• New forms of gang-related crime appear</li> <li>• There is evidence that the group of suspected victims has moved, over a period of time, through a number of countries</li> <li>• There is evidence that suspected victims have been involved in begging or in committing petty crimes in another country</li> </ul>
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**APPENDIX 2****COMPETENT AUTHORITIES CONTACT DETAILS**

<b>UK HUMAN TRAFFICKING CENTRE (UKHTC)</b>		
	<b>Area covered</b>	<b>Telephone</b>
24 hour contact	UK (including NI)	0844 7782406

<b>UK BORDER AGENCY (UKBA)</b>		
	<b>Area covered</b>	<b>Telephone</b>
Office Hours	Northern Ireland	(028) 9443 9540 (office) 0771 715 1272 (mobile)
Out of office hours		0161 261 1640 (out of hours UKBA contact)

**RESTRICTED (when completed)**

**APPENDIX 3**

**SAMPLE NATIONAL REFERRAL MECHANISM FOR POTENTIAL (ADULT) VICTIMS OF  
TRAFFICKING  
REPORT TO COMPETENT AUTHORITY FOR DECISION**

<p><b>Section A - Personal Details</b></p> <p>Last name: ..... First name(s): .....</p> <p>Also known as: .....</p> <p>D.O.B: ...../...../..... Age: ..... Sex: ..... Place of birth: .....</p> <p>Nationality: ..... Language: .....</p> <p>Any English spoken: Y/N or interpreter needed: Y/N Immigration status: .....</p> <p>Other communication aids required (e.g. Sign language): Y/N Details: .....</p> <p>Competent Authority referred to: UK Border Agency <input type="checkbox"/> UK Human Trafficking Centre <input type="checkbox"/></p> <p>Home Office ref: ..... Work Permit ref: .....</p> <p>Any other reference numbers: .....</p> <p>UK Home address/Contact Details: .....</p> <p>.....</p>
<p><b>Contact details of person making referral (First Responder)</b></p> <p>Name: .....</p> <p>Job title: .....</p> <p>Organisation: .....</p> <p>Tel: ..... Mobile: .....</p> <p>Email: .....</p> <p>Signature and date of referral: .....</p>
<p><b>Details of encounter</b></p> <p>Date: ...../...../..... Address (if different from above): .....</p> <p>.....</p> <p>With access to interpreter (if applicable): Y/N</p> <p>With access to legal advice: Y/N Details: .....</p>

**RESTRICTED (when completed)**

**Consent of individual**

I consent to my details including name and date of birth being submitted to the Competent Authority to assist in the identification process.

Signed: .....

**Section B - General indicators**

**Please tick all relevant boxes**

1. Distrustful of authorities
2. Expression of fear or anxiety
3. Signs of psychological trauma (including Post Traumatic Stress Disorder)
4. The person acts as if instructed by another
5. Injuries apparently a result of assault or controlling measures
6. Evidence of control over movement, either as an individual or as a group
7. Found in or connected to a type of location likely to be used for exploitation
8. Restriction of movement and confinement to the workplace or to a limited area
9. Passport or documents held by someone else
10. Lack of access medical care
11. Limited social contact
12. Limited contact with family
13. Perception of being bonded by debt
14. Money is deducted from salary for food
15. Threat of being handed over to authorities
16. Threats against the individual or their family members
17. Being placed in a dependency situation
18. No or limited access to bathroom/hygiene facilities
19. Any other, please provide details in Section F

**Where indicators are identified record full details in Section F**

**Section C - Indicators of forced labour**

**Are any of these indicators present? (Tick as applicable)**

**Yes  please tick all relevant boxes in Section C**

**No  continue to Section D**

1. Employer or manager unable to produce documents required when employing migrant labour
2. Employer or manager unable to provide record of wages paid to workers
3. Poor or non existent health and safety equipment or no health and safety notices
4. Any other evidence of labour laws being breached
5. No or limited access to earnings or labour contract
6. Excessive wage reduction
7. Dependence on employer for a number of services i.e. work, transport, accommodation
8. Any evidence workers are required to pay for tools, food or accommodation via deductions from their pay
9. Imposed place of accommodation
10. Any other, please provide details in Section F

**Where indicators are identified record full details in Section F**

**RESTRICTED (when completed)**

**Section D - Indicators of domestic servitude**

**Are any of these indicators present? (Tick as applicable)**

**Yes  please tick all relevant boxes in Section D**

**No  continue to Section E**

1. Living with and working for a family in a private home
2. Not eating with the rest of the family
3. No proper sleeping place or sleeping in shared space e.g. living room
4. No private space
5. Forced to work in excess of normal working hours or being "on-call" 24 hours per day
6. Employer reports them as a missing person
7. Employer accuses person of theft, kidnapping or other crime related to his/her escape
8. Never leaving the house without employer
9. Any other, please provide details in Section F

**Where indicators are identified record full details in Section F**

**Section E - Indicators of sexual exploitation**

**Are any of these indicators present? (Tick as applicable)**

**Yes  please tick all relevant boxes in Section E**

**No  continue to Section F**

1. Adverts for brothels etc offering women from particular ethnic/national groups
2. Sleeping on work premises
3. Movement of women between brothels or working in alternate locations
4. Women with very limited amounts of clothing and/or a large proportion of the clothing is 'sexual'
5. Only being able to speak sexual words in local language or language of client group
6. Person forced, intimidated or coerced into providing services of a sexual nature
7. Person subjected to crimes such as abduction, assault or rape
8. Does someone other than the victim receive the money from the client
9. Health symptoms (including sexual health issues)
10. Signs of ritual abuse and witch craft
11. Substance misuse
12. Any other, please provide details in Section F

**Where indicators are identified record full details in Section F**

**RESTRICTED (when completed)**

**Section F - Evidence to support reasons for referral (2 pages available)**

Please use this section to:

- Expand on the circumstances/details of the encounter or contact, providing background to how the information was provided (e.g. On first encounter during police operation)
- Provide evidence of the indicators that you have identified in Sections B to E
- Note whether it is likely that further information will be required
- Provide any other relevant information that you consider may be important and wish to include e.g. living/working conditions, behaviour, appearance, demeanour etc
- Movements in or to the UK, including dates (if known)
- Name of agent, exploiter or trafficker (if known) and
- Any action you have taken including referral to other agencies e.g. POPPY, local authorities, children's services etc where appropriate

(If a separate sheet is required, please indicate that section F is continued and provide with referral)

**Continued on next page**

Section	Indicator



**RESTRICTED (when completed)**

Section	Indicator

**RESTRICTED (when completed)**

## POTENTIAL VICTIMS OF TRAFFICKING FORM GUIDANCE NOTES

This form should only be completed for adults where trafficking is suspected or claimed. It is for use by all agencies to record their encounters with potential victims of trafficking (PVoT). It is not to be used as an interview record but as a means for a First Responder (FR) to provide as much information as possible to the Competent Authority (CA) to enable a decision to be reached on whether the subject has reasonable grounds for being treated as a victim of trafficking. Although this is not an interview record this does not prevent an approach being made to obtain further details where appropriate. The tick box Sections (B - E) have been designed to save the FR time in completing the form by providing recognised indicators which can be marked quickly and expanded upon in Section F.

If a PVoT is to be treated as a child, the FR must use the Local Authority (LA) referral form highlighting that the child is a PVoT and submit a copy to the CA for consideration.

### Section A

Complete as many of these details as possible, as more information will help the CA with their investigations, obviously the level of detail will depend on the environment in which a PVoT is encountered.

**Any other reference numbers:** Include any other reference numbers that are thought to be relevant here, for example: National Insurance Number, Local Authority Reference Numbers, Police Reference Numbers, your organisation's reference number. This will help where the Competent Authority needs to make further enquiries regarding the PVoT.

**UK Home address/Contact details:** The home address may differ from the address at which the PVoT is encountered. If provided, also include any contact numbers (landline or mobile) for them.

**Contact details of person making referral:** The FR should provide their work-related details here so that results of their referral can be fed back.

**Details of encounter:** State whether an interpreter was present during the encounter with the PVoT also note if any legal advice was provided and by whom.

**Consent of individual:** The PVoT **must** give their consent to this form being submitted to the CA, if they do not sign here then the form should not be referred to the CA for consideration.

### Section B

To assist the FR in making a primary assessment of whether the individual they encountered is or may be a PVoT, there are 18 general indicators. These indicators are not a definitive list and there are many other indicators that may raise concerns, therefore the option to highlight "other" indicators has been included. These indicators will work in combination with those in Sections C, D and E to provide a fuller picture of the person's circumstances. It is not the case that by selecting a set number of indicators this will equate to a person being a victim; it could be just one or a combination of factors that demonstrates that the person may be a victim, each case should be considered on its own merits. Tick all relevant boxes and provide supporting evidence in Section F. After completing this section, proceed to Section C.

**RESTRICTED (when completed)****Sections C, D & E**

To assist the FR in assessing the individual they have encountered, there are indicators of forced labour, domestic servitude and sexual exploitation; these will work in conjunction with the indicators already highlighted in section B. In each section tick any relevant boxes and provide supporting evidence in Section F.

You may also wish to consider whether the individual:

- Mentions that s/he was deceived by an agent/trafficker, i.e. false promises given such as well paid work, marriage or access to the education system
- Mentions that s/he was recruited through agents, family sold her/him etc

Tick all relevant boxes and provide supporting evidence in Section F.

**Section F**

The FR should begin by providing full details of the encounter, particularly when the trafficking issue was identified e.g. during a police operation, a formal interview, during a risk assessment, from a reported crime etc. This section also allows the FR to expand upon any indicators that have been highlighted in Sections B - E along with the particular circumstances that the PVoT was encountered, such as their appearance, demeanour or the condition of their surrounding environment. Where a tick box has been checked in Sections B - E, the comment in Section F should show which section and indicator it relates to. If the person has claimed to have been trafficked rather than identified by the FR, the FR should note this in Section F and whether the evidence of the indicators is being provided solely by the referred person or a person acting on their behalf or from independent sources. Note that if any other documentation has been completed separately which the FR believes to have relevance to the trafficking issue, the FR should make sure it is attached as this may assist the CA in reaching a decision.

**APPENDIX 4****ORGANISATIONS PROVIDING ACCOMMODATION AND SUPPORT FOR TRAFFICKED ADULTS**

**MIGRANT HELP** provides support services for adult male victims and, in certain circumstances, female victims of human trafficking in Northern Ireland.

<b>National</b>	<b>Northern Ireland</b>
Migrant Help Charlton House Dour Street Dover CT16 1AT  Tel: (013) 0420 3977 Fax: (012) 0420 3995 web: <a href="http://www.migranthelpline.org">http://www.migranthelpline.org</a>	      Tel: 077 6666 8781 or 013 0420 3977 e mail: <a href="mailto:mhl@migranthelpline.org">mhl@migranthelpline.org</a> web: <a href="http://www.migranthelpline.org">http://www.migranthelpline.org</a>

**WOMEN'S AID FEDERATION (NI)** provides support services for adult female victims of human trafficking in Northern Ireland.

Regional Office  
129 University Street  
Belfast  
BT7 1HP

Tel: (028) 9024 9041  
Fax: (028) 9023 9296  
E-mail: [info@womensaidni.org](mailto:info@womensaidni.org)  
Web: <http://www.niwaf.org>

**24- Hour Helpline 0800 917 1414**

**APPENDIX 5****CRIME OPERATIONS DEPARTMENT/DISTRICT PSNI & PUBLIC PROTECTION UNIT CONTACTS****CRIME OPERATIONS DEPARTMENT**

<b>Name / Dept</b>	<b>Area Covered</b>	<b>Telephone</b>
Duty Detective Inspector	Northern Ireland	0845 600 8000
On Call Duty Inspector, Organised Crime Branch	Northern Ireland	0750 077 8357 (24 hours)

**DISTRICT PSNI****Criminal Investigation Departments / Public Protection Units**

<b>Name</b>	<b>Area Covered</b>	<b>Telephone</b>
A District	North / West Belfast	0845 600 8000 / (028) 9065 0222
B District	South / East Belfast	0845 600 8000 / (028) 9065 0222
C District	Down / Ards	0845 600 8000 / (028) 9065 0222
D District	Lisburn, Antrim, Newtownabbey, Carrickfergus	0845 600 8000 / (028) 9065 0222
E District	Craigavon, Newry and Mourne, Banbridge, Armagh	0845 600 8000 / (028) 9065 0222 Newry - 028 3026 5500
F District	Fermanagh, Omagh, Cookstown, Dungannon and South Tyrone	0845 600 8000 / (028) 9065 0222 Enniskillen – (028) 6632 2823 Omagh – (028) 8224 6177 Dungannon – (028) 8775 2525
G District	Limavady, Magherafelt, Foyle, Strabane	0845 600 8000 / (028) 9065 0222 Londonderry – (028) 7136 7337
H District	Coleraine, Ballymoney, Moyle, Ballymena, Larne	0845 600 8000 / (028) 9065 0222 Coleraine – (028) 7034 4122 Ballymena – (028) 2565 3355

Please note that Public Protection Units can be contacted during normal office hours on Monday to Friday. Outside these hours please contact the Duty Detective Inspector in Crime Operations Department.

## APPENDIX 6

## HSC CONTACT DETAILS FOR TRAFFICKED ADULTS

HSC Trust	Designated Officer	Contact Details (Working Hours)	Contact Details (Out-of-Hours)
<b>Belfast</b> South, East, North and West Belfast	<b>Yvonne McKnight &amp; Deirdre Hegarty</b>  Trust Adult Safeguarding Specialists	Phone: (028) 9056 5637 or (028) 9056 5707 e-mail: <a href="mailto:Deirdre.hegarty@belfasttrust.hscni.net">Deirdre.hegarty@belfasttrust.hscni.net</a>	The Emergency Duty Team Phone: (028) 9056 5444 e-mail: <a href="mailto:edt5@belfasttrust.hscni.net">edt5@belfasttrust.hscni.net</a> Team Manager: Jane Barry e-mail: <a href="mailto:jane.barry@belfasttrust.hscni.net">jane.barry@belfasttrust.hscni.net</a>
<b>South Eastern</b> Newtownards, Down, North Down & Lisburn	<b>Sarah Browne</b>  Assistant Director	Tel: (028) 9250 1227 or (028) 9266 5181 ext 4575 e-mail: <a href="mailto:Sarah.browne@setrust.hscni.net">Sarah.browne@setrust.hscni.net</a>	As above
<b>Northern</b> Antrim, Ballymena, Ballymoney, Carrickfergus, Coleraine, Cookstown, Larne, Magherafelt and Newtownabbey	<b>Randal McHugh</b>  Trust Adult Safeguarding Specialist	Phone: (028) 9441 3125 e-mail: <a href="mailto:randal.mchugh@northerntrust.hscni.net">randal.mchugh@northerntrust.hscni.net</a>	Emergency Out-of-Hours Social Work Service. Phone: (028) 9446 8833
<b>Southern</b> Armagh, Banbridge, Craigavon, Dungannon, Newry and Mourne	<b>Eamonn Sherry</b>  Trust Adult Safeguarding Specialist Manager	Phone: (028) 3741 2334 Mobile: 07827293212 e-mail: <a href="mailto:eamon.sherry@southerntrust.hscni.net">eamon.sherry@southerntrust.hscni.net</a>	Duty Social Worker Craigavon Area Hospital Phone: (028) 3833 4444  Daisy Hill Hospital, Newry Phone: (028) 3082 5000  Mrs Louise Smyth Out-of-Hours Manager Phone: (028) 3752 0545/605
<b>Western</b> Londonderry, Limavady, Strabane, Omagh and Fermanagh	<b>Aidan Gordon</b> Assistant Director, Adult Safeguarding	Phone: (028) 7161 1366 e-mail: <a href="mailto:aidan.gordon@westerntrust.hscni.net">aidan.gordon@westerntrust.hscni.net</a>	Out of Hours – Standby Coordinator Phone: (028) 7134 5171 for Derry area or Phone: (028) 6638 2000 for Fermanagh and Omagh
<b>HSC Board</b>			
In the event of any difficulty in reaching a HSC Trust, please contact: <b>Joyce McKee</b> , Regional Adult Safeguarding Officer, HSC Board, Co. Hall, Galgorm Road, Ballymena Phone: (028) 2531 1213 Mobile: 07920186499 e-mail: <a href="mailto:joyce.mckee@hscni.net">joyce.mckee@hscni.net</a>			

**APPENDIX 7**

**GUM / SEXUAL HEALTH CLINICS CONTACT DETAILS**

HSC Trust	Clinic		Contact details
<b>BELFAST</b>	<b>Walk In Clinic</b> MONDAY WEDNESDAY THURSDAY FRIDAY	Doors open at 7:30 am. Afternoon slots may be allocated for Wednesday & Friday afternoon	Genitourinary Medicine Level 3 Outpatients Department Royal Group Hospitals Grosvenor Road Belfast  <b>Phone:</b> (028) 9063 6477 <b>Phone:</b> (028) 9063 6483
	THURSDAY 5.00pm - 7.00pm Gay Men's Clinic (Walk-in/Booked slots available)		
<b>NORTHERN</b>	<b>Walk In</b> TUESDAY FRIDAY	Registration 5.00pm Registration 1.30pm	Genitourinary Medicine Outpatients Department 2 Causeway Hospital 4 Newbridge Road Coleraine  <b>Phone:</b> (028) 7034 6028 <b>Phone:</b> (028) 7034 7872
	APPOINTMENT BASED Nurse-Led		
	MONDAY TUESDAY THURSDAY FRIDAY	9.30am - 12.30pm 9.30am - 12.30pm 9.30am - 12.30pm 9.30am - 12.30pm	
<b>SOUTHERN</b>	<b>Booked Slots</b> MONDAY WEDNESDAY FRIDAY	2.00pm - 5.30pm 9.00am - 12.30pm 9.00am - 12.30pm	Genitourinary Medicine, John Mitchell Place Hill Street Newry  <b>Phone:</b> (028) 3083 4215 <b>E-mail:</b> <a href="mailto:gum@southerntrust.hscni.net">gum@southerntrust.hscni.net</a>
	TUESDAY	9.00am - 4.00pm Nurse-Led	

<b>SOUTH EASTERN</b>	APPOINTMENT BASED		Sexual Health Clinic, Outpatients Dept, Downe Hospital, 2 Struell Wells Road, Downpatrick  <b>Phone:</b> (028) 4483 8133 (Appointments) <b>Phone:</b> (028) 4483 8392 (Nurse Advice)
	MONDAY WEDNESDAY FRIDAY	9.00am - 12.00pm 3.30pm - 6.30pm 8.30am - 12.00pm	
	MONDAY	9.00am - 12.00pm Nurse-Led	Bangor Community Hospital  <b>Phone:</b> (028) 4483 8133
<b>WESTERN</b>	APPOINTMENT BASED (Partial booking system 48hrs in advance)		Genitourinary Medicine Anderson House Glenshane Road Londonderry  <b>Phone:</b> (028) 7161 1269
	MONDAY	9.30 - 11.30am & 4.00 - 6.30pm	
	TUESDAY	9.30 - 11.30am & 1.30 - 3.30pm	
	WEDNESDAY	9.30 - 11.30am & 1.30 - 3.30pm	
	THURSDAY	9.30 - 11.30am & 1.30 3.30pm	
	FRIDAY	9.30 - 11.30am	
	APPOINTMENT BASED		Sexual Health Clinic Outpatients Department Tyrone County Hospital Omagh  <b>Phone:</b> (028) 8283 3189
WEDNESDAY	1.00pm - 6.00pm		
Appointments can also be booked through Altnagelvin GUM on (028) 7161 1269 (Monday - Friday)			



## APPENDIX 8

### LINKS TO RELATED SITES

AIRE Centre <http://www.airecentre.org/>

Amnesty International: <http://www.amnesty.org.uk/>

Anti-Slavery International: <http://www.antislavery.org>

Asylum Aid: <http://www.asylumaid.org.uk>

BAWSO: <http://www.bawso.org.uk/>

Blue Blindfold: <http://www.blueblindfold.co.uk>

CARE: <http://www.care.org.uk>

Chaste: <http://www.chaste.org.uk>

Coalition Against Trafficking in Women-International:

<http://www.catwinternational.org/>

Community Foundation for Northern Ireland: <http://www.communityfoundationni.org/>

Council of Europe web site on trafficking:

[http://www.coe.int/t/dghl/monitoring/trafficking/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/trafficking/default_en.asp)

Department for Education and Learning: <http://www.delni.gov.uk/>

Department of Health, Social Services and Public Safety:

<http://www.dhsspsni.gov.uk/>

Department of Justice: <http://www.dojni.gov.uk/>

Department for Social Development: <http://www.dsdni.gov.uk/>

Europa Summaries of EU Legislation – Fight against trafficking in human beings:

[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/index\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/index_en.htm)

European Commission Home Affairs:

[http://ec.europa.eu/home-affairs/policies/crime/crime\\_human\\_trafficking\\_en.htm](http://ec.europa.eu/home-affairs/policies/crime/crime_human_trafficking_en.htm)

EUROPOL: <http://www.europol.europa.eu>

Gangmasters Licensing Authority: <http://www.gla.gov.uk>

Global Alliance Against Trafficking in Women: <http://www.gaatw.org/>

Helen Bamber Foundation: <http://www.helenbamber.org/>

HM Revenue & Customs (HMRC): <http://www.hmrc.gov.uk/>

HSC Board: <http://www.hscboard.hscni.net/>

HSC Trust – Belfast: <http://www.belfasttrust.hscni.net/>

HSC Trust – Northern: <http://www.northerntrust.hscni.net/>

HSC Trust – Northern Ireland Ambulance Service: <http://www.niamb.co.uk/index.html>

HSC Trust – Southern: <http://www.southerntrust.hscni.net/>

HSC Trust – South Eastern: <http://www.setrust.hscni.net/>

HSC Trust – Western: <http://www.westerntrust.hscni.net/>

Immigration Law Practitioners' Association: <http://www.ilpa.org.uk>

Immigration and Nationality Directorate, Home Office: <http://www.ind.homeoffice.gov.uk>

International Labour Organisation: <http://www.ilo.org>

Joint Council for the Welfare of Immigrants: <http://www.jcwi.org.uk>

Kalayaan: <http://www.kalayaan.org.uk>

La Strada International: <http://www.lastradainternational.org>

Medaille Trust: <http://www.medaille.co.uk/>

nidirect Government Services: <http://www.nidirect.gov.uk/>

Northern Ireland Housing Executive: <http://www.nihe.gov.uk/>

Northern Ireland Human Rights Commission: <http://www.nihrc.org/>

Northern Ireland Strategic Migration Partnership: <http://www.nilga.org/News/Northern-Ireland-Strategic-Migration-Partnership-N.aspx>

Office of First and Deputy First Minister: <http://www.ofmdfmi.gov.uk/>

Police Service of Northern Ireland: <http://www.psni.police.uk/>

Poppy Project: <http://www.eavesforwomen.org.uk/about-eaves/our-projects/the-poppy-project>

Public Health Agency: <http://www.publichealth.hscni.net/>

Public Prosecution Service for Northern Ireland (PPSNI): <http://www.ppsni.gov.uk/>

Refugee Council: <http://www.refugeecouncil.org.uk>

Serious Organised Crime Agency (SOCA): <http://www.soca.gov.uk>

Social Security Agency: <http://www.dsdni.gov.uk/index/ssa.htm>

SOLACE: <http://www.solace.org.uk>

Stop Trafficking: <http://www.stop-uk.org>

Stop the Traffik: <http://www.stophetraffik.org>

The Human Trafficking Foundation: <http://www.humantraffickingfoundation.org/>

UK Border Agency: <http://www.ukba.homeoffice.gov.uk/>

UK Human Trafficking Centre: <http://www.soca.gov.uk/about-soca/about-the-ukhtc>

United Nations Office on Drugs and Crime – Human Trafficking and Migrant Smuggling: <http://www.unodc.org/unodc/en/human-trafficking/index.html>

United Nations Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime 2000: [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf)

Unchosen: <http://www.unchosen.org.uk/>

UN GIFT: <http://www.ungift.org>

UNSEEN: <http://www.unseenuk.org>

**LIST OF ALL RESPONDEES**

		<b>Response to be treated in confidence? Received via on-line / written</b>	<b>Organisation &amp; Address</b>
1.	i) No ii) Email		James Behan, Head of Operations, UK Human Trafficking Centre ( <b>UKHTC</b> ), Serious Organised Crime Agency Email: <a href="mailto:james.behan@soca.x.gsi.gov.uk">james.behan@soca.x.gsi.gov.uk</a>
2	i) No ii) Written		Trevor Polley MA MBA, Chief Executive and Town Clerk, North Down Borough Council ( <b>NDBC</b> ), Town Hall, The Castle, Bangor, Co. Down, BT20 4BT Email: <a href="mailto:enquiries@northdown.gov.uk">enquiries@northdown.gov.uk</a>
3	i) No ii) Email		D/Supt McComb (1) and D/Supt Marshall (2) <b>PSNI</b> , C1 Organised Crime Branch, Knocknagoney Email: <a href="mailto:rov.mccomb@psni.pnn.police.uk">rov.mccomb@psni.pnn.police.uk</a>
4	i) No ii) Email		Gillian Clifford, Policy & Information Manager, Victim Support NI ( <b>VSNI</b> ), Annsgate House, 70-74 Ann Street, Belfast, BT1 4EH Email: <a href="mailto:gillianc@victimsupportni.org.uk">gillianc@victimsupportni.org.uk</a>
5	i) No ii) Email		Loretta Crumlish, Named Nurse Safeguarding, Western Health and Social Care Trust ( <b>Named Nurse Safeguarding WHSCT</b> ) Email: <a href="mailto:Loretta.crumlish@westerntrust.hscni.net">Loretta.crumlish@westerntrust.hscni.net</a>
6	i) No ii) Email		Paul Morgan, Executive Director of Social Work, Southern Health and Social Care Trust ( <b>SHSCT</b> ), Edenderry House, 18 Gifford Road, Portadown, BT63 5ED. Email: <a href="mailto:Barbara.lovce@southerntrust.hscni.net">Barbara.lovce@southerntrust.hscni.net</a> (PA) or <a href="mailto:paul.morgan@southerntrust.hscni.net">paul.morgan@southerntrust.hscni.net</a>
7	i) No ii) Email		Khara Glackin, Solicitor, South Tyrone Empowerment Programme ( <b>STEP</b> ), Unit T7, Dungannon Business Park, 2 Coalisland Road, Dungannon, Co. Tyrone, BT71 6JT Email: <a href="mailto:Khara@stepni.org">Khara@stepni.org</a>
8	i) No ii) Email		Orla Barron, Health and Social Inequalities Manager, Belfast Trust & Social Care Trust, ( <b>BTSC</b> ), Health & Social Inequalities, 1 <sup>st</sup> Floor, Graham House, Knockracken Healthcare Park, Sainfield Road, BELFAST, BT8 8BH Email: <a href="mailto:Lesley.jamieson@belfasttrust.hscni.net">Lesley.jamieson@belfasttrust.hscni.net</a> (PS)
9	i) No ii) Email		Caroline Cunningham, Policy and Research Officer, NI Commissioner for Children and Young People ( <b>NICCY</b> ), Equality House, 7-9 Shaftesbury Square, BELFAST, BT2 7DP Email: <a href="mailto:Caroline@NICCY.ORG">Caroline@NICCY.ORG</a>
10	i) No ii) Email		Roger McVicker, <b>Migrant Helpline Ltd</b> , Chariton House, Dour Street, Dover, Kent Email: <a href="mailto:roger.mcvicker@migranthelpline.org">roger.mcvicker@migranthelpline.org</a> or <a href="mailto:charlotte.kirkwood@migranthelpline.org">charlotte.kirkwood@migranthelpline.org</a>
11	i) No ii) Email		Elizabeth Griffith, <b>Law Centre NI and Amnesty International (LCNI)</b> Email: <a href="mailto:Elizabeth.griffith@lawcentreni.org">Elizabeth.griffith@lawcentreni.org</a> <b>For further information about this consultation response contact:</b> Policy Unit Law Centre (NI) 124 Donegall Street Belfast BT1 2GY Tel: 028 90 2444 01 Fax: 028 90 2363 40 Text phone: 028 90 23 99 38  Gráinne Teggart Amnesty International 397 Ormeau Road Belfast BT7 3GP Tel: 028 9064 3000

**LIST OF ALL RESPONDEES**

	<b>Response to be treated in confidence? Received via on-line / written</b>	<b>Organisation &amp; Address</b>
12	i) No ii) Email	Deborah Hanlon, <b>Adult Safeguarding Specialist WHSCT</b> , Oakhill House, Tyrone County Hospital Site, Omagh, 028 71 611366 Email: <a href="mailto:Deborah.hanlon@westerntrust.hscni.net">Deborah.hanlon@westerntrust.hscni.net</a>
13	i) No ii) Email	Geraldine Alexander, <b>NIPSA</b> Assistant Secretary, Harkin House, 54 Wellington Park, Belfast BT9 6DP Tel: 028 9066 1831 Fax: 028 9066 5847 E-Mail: <a href="mailto:info@nipssa.org.uk">info@nipssa.org.uk</a> Karen Barrett <a href="mailto:Barrett@nipssa.org.uk">Barrett@nipssa.org.uk</a>
14	i) No ii) Email	Martine McKillop, <b>CSU</b> Email: <a href="mailto:Martine.mckillop@dojni.x.gsi.gov.uk">Martine.mckillop@dojni.x.gsi.gov.uk</a>
15	i) No ii) Email	Louise Higgins, Regional Policy and Information Co-ordinator, Women's Aid Federation NI, <b>WAFNI</b> , 129 University Street, Belfast, T7 1HP Email: <a href="mailto:louise.higgins@womensaidni.org">louise.higgins@womensaidni.org</a>

**No Comments**

<b>Organisation</b>	<b>No Comment given</b>
Office of Care & Protection, Patient's Section, RCJ, Chichester Street, Belfast	Not relevant to NICtS
NI Ombudsman, 5 <sup>th</sup> Floor, Progressive House, 33 Wellington Place, Belfast BT1 6HN	The Ombudsman does not comment on consultation documents
David Millar, Farm Policy Branch, DARD	No suggestions to make

**GENERAL COMMENTS**

Organisation	Comment	Way Forward								
UKHTC	<p>I particularly like the way the document brings all the various sections/departments together whilst highlighting a clear lead – PSNI. The only area (s) where I feel there could be amendment relates to the service the UKHTC offers, which is more than the NRM. The Centre has a 24/7 advice line which is staffed by experienced investigators who can, and do give advice to first responders and or those who come across potential victims of trafficking. This advice often relates to the NRM, but also victim identification, progressing investigations, intelligence and trends etc. Naturally some of these functions are done by the police, but the understanding across a force can sometimes be limited especially where new processes are being put in place and are still bedding in. The advice offered generally gives confidence to the caller to "progress" the case, and often results in longer term working/interaction.</p> <p><b>Parts in red to be added to end of paragraphs</b></p> <p>Glossary of terms - The UKHTC also offers a 24/7 advice line staffed by experienced investigators to support first responder and those who come into contact with potential victims of trafficking. This support includes short medium and long term advice regarding victim identification, victim care, NRM, legislation and investigation.</p> <p>Para 3.4 - Advice can also be sought from the UKHTC 24/7 tactical advisors.</p> <p>Para 8.4 – The UKHTC also offers a 24/7 advice line staffed by experienced investigators to support first responder and those who come into contact with potential victims of trafficking. This support includes short medium and long term advice regarding victim identification, victim care, NRM, legislation and investigation.</p> <p>Web address: <a href="http://www.soca.gov.uk/about-soca/about-the-ukhtc/contactuk.htm">http://www.soca.gov.uk/about-soca/about-the-ukhtc/contactuk.htm</a> (Not 24 hours)</p> <p>Telephone: 0844 778 2406 (24 hours)</p>	<p>Accepted. These amendments have been incorporated into the guidance.</p>								
NDBC	<p>The Consultation is welcome and robust legislation should be put in place regarding Human Trafficking.</p>	<p>Outside the scope of the guidance. New offences are being introduced in the Criminal Justice Bill. Suggestions for other legislative change are being considered by the Department of Justice and the Organised Crime Task Force.</p>								
PSNI	<p>1. The telephone contact number of the On Call C1 Duty Inspector - 07500 778357 - should be included at Appendix 5</p> <p>2. Item 3.18 should also include the following - C1 OCB will be the primary investigative lead for PSNI</p> <p>3. Item 6.2 - Second line - Branch to be changed to Department</p> <p>4. Item 6.3 - Fifth line - 40 hours should read 48 hours</p> <p>Appendix 5 Contact Details PSNI</p> <table border="1" data-bbox="1203 546 1276 1798"> <thead> <tr> <th data-bbox="1203 1375 1230 1480">Name</th> <th data-bbox="1203 1227 1230 1375">Area</th> </tr> </thead> <tbody> <tr> <td data-bbox="1235 1375 1262 1480">Duty Detective Inspector</td> <td data-bbox="1235 1227 1262 1375">Northern Ireland</td> </tr> <tr> <td data-bbox="1267 1375 1276 1480"><b>Organised Crime Branch</b></td> <td data-bbox="1267 1227 1276 1375"><b>0845 600 8000</b></td> </tr> <tr> <td></td> <td data-bbox="1267 958 1276 1064"><b>07500 778357 (24/7)</b></td> </tr> </tbody> </table>	Name	Area	Duty Detective Inspector	Northern Ireland	<b>Organised Crime Branch</b>	<b>0845 600 8000</b>		<b>07500 778357 (24/7)</b>	<p>Accepted. These amendments have been incorporated into the guidance.</p>
Name	Area									
Duty Detective Inspector	Northern Ireland									
<b>Organised Crime Branch</b>	<b>0845 600 8000</b>									
	<b>07500 778357 (24/7)</b>									

**GENERAL COMMENTS**

<p><b>WHSTC</b></p>	<p><b>Outside of these hours please contact the Duty Detective Inspector in Organised Crime Branch</b> This document is very welcome and outlines roles and responsibilities clearly. Relevant issues are addressed and relevant contact details very useful.</p>	
<p><b>STEP</b></p>	<p>There is confusion as to who specifically this guidance is aimed at. At paragraph 1.2 it states:  “.....While this guidance is primarily for use by the PSNI and the HSC Trusts, all practitioners, agencies and public facing service providers have an important role in identifying and securing help for victims of trafficking.”  This suggests that the overall scope of the guidance is quite broad. This guidance should be specifically tailored to identify the role of Social Workers and all other HSC Trust staff at each stage of the NRM process. This guidance cannot in itself apply to other organisations. It requires more specific action points as opposed to general commentary.</p>	<p>Paragraph 1.2 has been amended to clarify that the guidance is primarily for use by PSNI and HSC Trust staff.</p>
<p><b>BHSTC</b></p>	<p>This response is principally based on the questions relating to equality and human rights and has been drafted by the Trust's Health and Social Inequalities Manager.  From the outset, the Trust would recommend a stronger emphasis on training provision and awareness building in this area. As the guidance clearly states <i>that victims may be in plain sight if practitioners and the wider public know what to look for</i> – it is imperative that guidance and advertising helps to raise awareness and that specific training is given in the five areas of competence cited in 1.5 in responding to the crime of human trafficking. It is also important to have regional consistency across health and social care, as victims can often be moved from place to place to avoid detection.  This would appear to be a relatively new phenomenon in Northern Ireland and public awareness is not particularly high – although the guidance documents that there were 33 potential victims of human trafficking recovered in Northern Ireland between 2011/2012. Some of these people were British – and perhaps it is not sufficiently known that people can be trafficked within a country or across the border. It is important that Health and Social Care practitioners and staff are sufficiently equipped and trained to avoid stereotyping or making assumptions on the basis of someone's race or ethnicity or misconstruing cultural nuances or norms.  The guidance rightly acknowledges the importance of overcoming the language barrier and therefore the Trust, which manages the Northern Ireland Health and Social Care Interpreting Service on behalf of the region, would advocate the specialist training on the subject of human trafficking of both interpreters contracted by Health and Social Care and by the PSNI.  Given the potential for coming in contact with a victim in a health and social care setting, it is vital that staff know how to react responsibly and responsibly and that they are equally aware of the potential repercussions if the appropriate and recommended guidance is not duly followed.  The issue of no recourse to public funds has not been mentioned in this document and this results in staff having to exercise discretion and may lead to inconsistencies unless a regional HSC guidance is produced and published.</p>	<p>A training needs analysis for Health and Social Care Trust staff is being carried out and a training plan will be developed. PSNI has a training package in place. Joint training events are planned.</p> <p>This suggestion will be passed to the HSCB and PSNI for further consideration and to those who are developing the training plan referred to above.</p> <p>Reference is made in the guidance. DHSSPS is the process of developing guidance for the Social Care sector, which seeks to clarify the law around access to social care by both EEA and non-EEA nationals. The position in relation to access to both health and social care is set out in paragraph 7.19.</p> <p>Accepted. The guidance has been amended accordingly</p>
<p><b>Migrant Help</b></p>	<p>Migrant Help's description regarding supporting female victims of labour or domestic exploitation is factually incorrect. While Women's Aid will support all female victims of human trafficking irrespective of the type of exploitation as Migrant Help's sub contract partners there are certain and specific circumstances when Migrant Help will support female victims, including those who have been sexually exploited. Women's Aid do not contract directly with DOJ for the support services of victims of trafficking, WAFNI are a subcontractors of Migrant Help.</p>	



**GENERAL COMMENTS**

<p>LCNI</p>	<p>We think this guidance would benefit from being much more focused in who it is aimed at. It states:  <i>While this guidance is primarily for use by the PSNI and HSC Trusts, all practitioners, agencies and public facing service providers have an important role in identifying and securing help for victims of trafficking (para. 1.2)</i>                  Thus, the scope of this guidance is relatively broad and to some extent seems to be 'all things to all people'. In our view, this creates problems. First, this guidance cannot apply to other organisations and yet it seeks to do so (e.g. para. 3.4, see following section). Already, therefore, sections of the guidance become redundant, which risks that the guidance itself loses stature. Secondly, we feel that this is a missed opportunity to really spell out, in clear, concise terms, the role of the Social Services in assisting trafficked victims. At the moment, the guidance reads more as an account of the NRM process rather than pinpointing the role of Social Workers, and other HSC Trust staff, at each stage of the process.</p> <p>In general, therefore, we think the guidance would benefit from having less commentary (and we appreciate that we are suggesting more content in some instances) and more specific <i>action points</i>. We are not sure if it is feasible that the same guidance can be used by both PSNI and Trust staff as their roles are so different. It would perhaps make sense to separate the guidance into two parts to reflect the different roles.</p> <p>Paras i- iii We think it would be useful to include the following in the glossary:</p> <ul style="list-style-type: none"> <li>- Compensation</li> <li>- Public Prosecution Service</li> <li>- Residence Permit</li> <li>- Interpreters</li> </ul> <p>Although this guidance is aimed at adults, it might be a good idea for it to make reference to the Child Victims guidance. In addition, you may well be aware that Deirdre Coyle (Health Board, Social Care Commissioner Lead) is currently drafting a framework standard for separated children, which will include trafficked children.</p> <p>Para 1.5 The first sentence does not read well. Rarely are victims 'in plain sight' even if practitioners and the wider public know what to look for.</p> <p>Para 1.6 It might be helpful to explain the <i>relevance</i> of a victim of trafficking being considered a vulnerable adult.</p> <ul style="list-style-type: none"> <li>- What are the implications of 'vulnerable adult' status for victims of trafficking?</li> <li>- At what point in the determination process is the victim deemed a 'vulnerable adult'?</li> <li>- When does 'vulnerable adult' status end?</li> </ul> <p>Chart 1                  See above section on Residence Permits.</p> <p>This chart should be amended to show that victims can be granted a Residence Permit without cooperating with law enforcement.</p>	<p>Paragraph 1.2 has been amended to clarify that the guidance is primarily for use by PSNI and HSC Trust staff.</p> <p>Definitions of these terms will be included in the leaflet for victims that the Department of Justice will develop with Amnesty International later this year.</p> <p>The guidance makes reference to the Working Arrangements for the Welfare and Protection of Child Victims of Human Trafficking at paragraph 1.1.</p> <p>Accepted. The guidance has been changed.</p> <p>Not accepted. Paragraph 1.6 states that adult victims of human trafficking are considered to be vulnerable adults in the context of Safeguarding Vulnerable Adults – Regional Adult Protection Policy and Procedural Guidance and the associated Protocol for</p>
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**GENERAL COMMENTS**

		<p>Joint Investigation of Alleged and Suspected Cases of Vulnerable Adults</p> <p>The chart already indicates that a victim who does not wish to cooperate with law enforcement may apply for leave to remain. The text at paragraph 4.8 has been amended to clarify the position.</p>
<p><b>NIPSA</b></p>	<p>NIPSA has been concerned about the growing nature and extent of human trafficking in Northern Ireland. We therefore welcome the opportunity to comment on this positive development of working arrangements for the welfare and protection of adult victims of human trafficking. However we do have some general comments and concerns which are detailed below.</p> <p>Key to the success of these working arrangements is not only the provision of necessary resources but also appropriate training. The identification of victims of trafficking at the earliest opportunity is vital to the provision of safety and support. Victims may often come into brief, or even extended, contact with a number of voluntary organisations and statutory bodies. It is essential that staff at all potential points of contact are properly trained in identification protocols and are aware of procedures for reporting suspected cases to support organisations and the police.</p>	<p>A training needs analysis for Health and Social Care Trust staff is being carried out and a training plan will be developed. PSNI has a training package in place. Joint training events are planned.</p>
<p><b>CSU</b></p>	<p>We found it to be a very useful document which is immensely informative and is a good induction tool for the various complexities relating to human trafficking.</p> <p>Appendix 4. Similar concerns to those mentioned for Page 28 (Para 8.3. Section 8) (Women's Aid), the 24-hr DV Helpline etc. Also we wondered if there is a need to list the numbers for the refugees in Newry and Derry; if so, then should the Belfast and Lisburn refuge number also be listed? (90 666049)</p>	<p>Accepted. The contact details have been removed.</p>
<p><b>WAFNI</b></p>	<p>Women's Aid Federation Northern Ireland welcomes the publication of the draft Working Arrangements for the Protection and Welfare of Adult Victims of Trafficking, and the opportunity to comment upon it on behalf of our ten local groups.</p> <p>Women's Aid welcomes the significant progress that has been made to date in tackling human trafficking and supporting victims of trafficking in Northern Ireland. Many positive measures have already been put in place, specifically Women's Aid Federation Northern Ireland's partnership with Migrant Help to provide support to victims of human trafficking. We are also pleased that partnerships and working relationships between Women's Aid, Migrant Help, the PSNI, UKBA, and the Department of Justice are developing well. This guidance is yet another necessary, positive step in providing an effective, cohesive, multi-agency response to human trafficking in Northern Ireland.</p> <p>We welcome that the guidance advocates early liaison between Migrant Help / Women's Aid and the relevant HSC Trust, as outlined in paragraph 1.7.</p> <p>In addition to the guidance already outlined in these working arrangements, we would support the addition of further information on what happens after a victim is conclusively confirmed as a trafficking victim, and what aftercare should be in place. This should include the procedure for obtaining long-term social support services (including counselling if and when desired), and assistance with integrating into society, getting a job and rebuilding his or her life.</p>	<p>These issues will be reflected in a leaflet for victims that the Department of Justice will develop with Amnesty international.</p>

**GENERAL COMMENTS**

	<p>Targeted training should be developed and agreed upon for those dealing with victims of trafficking. This should include training for PSNI and all support workers and carers, and should include training on filling out NRM forms where necessary.</p> <p>As the nature and extent of human trafficking in Northern Ireland, and our response to it, is changing rapidly, we suggest that this guidance should be subject to review every 2 years.</p> <p>The contact details of our refuges are confidential and should not be on any public documents. In addition, all correspondences on trafficking should be directed through the 24 Hour Domestic Violence Helpline. We request that details of all and any Women's Aid refuges are removed to avoid confusion and protect confidentiality (see Appendix 4, page 46).</p>	<p>A training needs analysis for Health and Social Care Trust staff is being carried out and a training plan will be developed. PSNI has a training package in place. Joint training events are planned. Agreed. The guidance will be routinely reviewed and updated.</p> <p>Accepted. The details of the refuges have been deleted.</p>
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SECTION 2

Organisation	What is Human Trafficking? (Paras 2.1 – 2.12) Did you find this helpful? If not how might it be improved?	Differences between Human Trafficking and People Smuggling (Paras 2.13 - 2.15) Did you find this helpful? If not how might it be improved?	The EU Directive on Human Trafficking (Paras 2.16 – 2.17) Did you find this helpful? If not how might it be improved?	Any other comments?	Way Forward
PSNI				Section is helpful. Good introduction and separation of two issues.	
VSNi	VSNi find the brief overview, contained in the Consultation Draft, of what Human Trafficking to be well presented and very helpful, clear and concise.	VSNi find the brief overview, contained in the Consultation Draft, the differences between Human Trafficking and People Smuggling to be well presented and very helpful, clear and concise.	VSNi find the brief overview, contained in the Consultation Draft, the EU directive on Human Trafficking to be well presented and very helpful, clear and concise.	No.	
WHSTC	Clearly describes Human Trafficking	Clearly defines differences and table 2 very useful	Helpful, it might also be useful to add a footnote clarifying NI's position relating to these directives.		No change considered necessary. The United Kingdom, as Member State, ratified the Directive and it applies across the United Kingdom, including Northern Ireland.
SHSCT	Staff in adult services feel this section is helpful and provides a good definition of human trafficking. It provides information on the fact trafficking is not necessarily international (inter-country) but can be domestic (within a country). The paper also provides information on the reasons for trafficking including domestic servitude. This is usefully led out in Table 1.	Again this section is seen to be useful and informative. Table 2 provides a good visual aid in articulating the difference between human trafficking and people smuggling and the fact that smuggling can morph into the trafficking.	What arrangements/directives are in place in situations where the trafficked person begins their journey outside the EU.		Paragraph 2.17 has been amended. The Directive requires Member States to act to prevent and combat human trafficking and protect all victims.
STEP	In respect of paragraph 2.2, it would be very helpful to break down the definition of human trafficking into its three components: The Act (Recruitment; transport; transfer; harbouring and receipt of persons), the Means (Threat or use of force; coercion; abduction; fraud; deception; abuse of power or vulnerability), and the Purpose (for exploitation). The intention of exploitation is sufficient for the person to be deemed a victim of human trafficking.				Accepted. The table setting out the three components has been moved to Paragraph 2.2.
Migrant Help	Yes	Possible comment that sometimes a victim of human	Yes		This issue is covered by Paragraphs 2.14 and 2.15

SECTION 2

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LCNI	<p>Para 2.2 Given the length of the widely accepted definition of human trafficking, it would be helpful to add a paragraph breaking it down into its three components, which makes it much easier to comprehend.</p> <p>A good example is found in the NIA Research &amp; Info Service paper (NIAR 012-12):</p> <p>"Human trafficking is therefore defined in terms of the <b>act</b> (the movement of persons), the <b>means</b> (by coercion or deception) and the <b>purpose</b> (for exploitation). In the case of children, the means is irrelevant, only movement for the purposes of exploitation being sufficient to constitute trafficking" (emphasis in the original)</p>	<p>trafficking may have originally been complicate in their illegal entry and illegal employment in the UK but at a later stage exploited by traffickers. The exploitation of the person by use or threat of force or coercion may have always existed as a tactic to be deployed by the traffickers further along the process or the traffickers may see the exploitation of the person as 'too good an opportunity to miss'. Either way the blurring of people smuggling/human trafficking is a matter for front line professionals to be alert to. In all these matters the police should be informed.</p> <p>What is the relevance of distinguishing between trafficking and smuggling? It would be useful to state the implications e.g. victims of trafficking have rights and entitlements and are owed protections under international and domestic law, etc. We are pleased that the guidance recognises the often 'blurred line' between trafficking and smuggling.</p>			<p>This has been addressed. The table setting out the Process, Means and Purpose has been moved to Paragraph 2.2.</p> <p>Paragraph 2.14 has been amended to clarify that victims of trafficking have rights and entitlements and are owed protections under international and domestic law.</p>

<sup>1</sup> <http://www.niassembly.gov.uk/Documents/Res/Se/Publications/2012/ofindfm/10012.pdf>

SECTION 2

Organisation	What is Human Trafficking? (Paras 2.1 – 2.12) Did you find this helpful? If not how might it be improved?	Differences between Human Trafficking and People Smuggling (Paras 2.13 - 2.15) Did you find this helpful? If not how might it be improved?	The EU Directive on Human Trafficking (Paras 2.16 – 2.17) Did you find this helpful? If not how might it be improved?	Any other comments?	Way Forward
	<p>In addition, it might be useful to add that the <i>intention</i> of exploitation is sufficient for a person to be deemed a victim of trafficking: exploitation does not necessarily have had to occur. Furthermore, if the <i>means</i> is present, any consent on the part of the victim is irrelevant.</p> <p>Para 2.7 It might be useful to point out that there has also been a recent case of domestic servitude (although not in 2011/12), so that Trust Staff are also alert to this.</p> <p>Para 2.9 The final bullet point should be reworded. Stating that traffickers may 'direct victims to claim asylum thereby seeking to exploit the situation' risks creating a very negative impression of any trafficking victim who also claims asylum. This could result in the potential victim being treated with suspicion by those using the guidance. Everyone has the right to seek asylum from persecution (Art 14 of Universal Declaration of Human Rights; UN Convention on Refugees). No aspersion should be cast on any individual who chooses to exercise this right.</p>				<p>Not accepted. The Palermo Protocol sets out the internationally recognised definition of human trafficking and is replicated at Paragraph 2.2</p> <p>Not accepted. Paragraph 2.7 highlights recent trends suggesting that trafficking for labour exploitation may become more prevalent.</p> <p>Agreed. Paragraph 2.9 has been amended and states that everyone has the right to seek asylum from persecution and that no aspersion should be cast on any individual who chooses to exercise this right.</p>
Adult Safeguarding Specialist WHSCT				This section is useful as an introduction to Human Trafficking	



**SECTION 2**

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	<p>asylum system at paragraph 2.9. While this may happen in some instances, it is completely unacceptable to imply that this is the case across the board, hence encouraging practitioners to adopt a default position of suspicion towards victims. The wording of the guidance at paragraph 2.9, and the emphasis (using bullet points) on the victim lying about age and immigration status, may encourage those practitioners to treat victims as criminals and immigration law violators as opposed to the victims that they are. This contravenes the guidance's own assertion at paragraph 1.3 that a victim-centred approach must be taken at all times when dealing with potential victims of trafficking. It also hampers the process of supporting victims and investigating the crime of trafficking, as disbelief of victims may discourage them from trusting and co-operating with the authorities.</p> <p>The suggestion that practitioners should be suspicious about the age of a victim in paragraph 2.9 is particularly problematic. The Council of Europe Convention on Action Against Trafficking in Human Beings (the Convention) states that "when the age of a victim is uncertain and there are reasons to believe the victim is a child, he or she will be presumed to be a child and shall be accorded special protection measures pending verification of his/her age." This presumption is also outlined in paragraph 7.12 of the guidance. However, the guidance in paragraph 2.9 undermines this by implicitly urging practitioners to err on the side of suspicion and presume that people of uncertain age are older than they say they are. This should be rephrased to ensure</p>				<p>the methods of control a trafficker may use. The reader is directed to Paragraphs 7.11 – 7.14 which set out the requirements of the Convention in relation to age disputed individuals.</p>



SECTION 2

Organisation	What is Human Trafficking? (Paras 2.1 – 2.12) Did you find this helpful? If not how might it be improved?	Differences between Human Trafficking and People Smuggling (Paras 2.13 - 2.15) Did you find this helpful? If not how might it be improved?	The EU Directive on Human Trafficking (Paras 2.16 – 2.17) Did you find this helpful? If not how might it be improved?	Any other comments?	Way Forward
	<p>that all practitioners are being directed to comply with the Convention.</p> <p>We reiterate this point in respect of paragraph 7.13, which concerns determining the age of a victim. In cases such as these, it should be presumed that victims are the age they claim they are until proven otherwise. Any age assessment must be undertaken with sensitivity.</p> <p>It should also be pointed out that all people have the right to seek asylum from persecution under Article 14 of the Universal Declaration of Human Rights. Therefore exercising this right should not be cast in a negative light in this guidance.</p> <p>Women's Aid is concerned at the presentation of statistics at paragraph 2.7. Although adult victims of trafficking are disaggregated by gender in the guidance, the same cannot be said for child victims. It is extremely important that the numbers of children trafficked in the UK are broken down by gender, especially considering the prevalence of girls under the age of 18 who may be trafficked for the purposes of sexual exploitation.</p> <p>Furthermore, the manner in which these statistics are laid out is potentially misleading. The guidance states that "seven were males trafficked for labour exploitation and eight were minors (seven of which were trafficked within the UK for the purposes of sexual exploitation)". This could be easily misinterpreted as all 8 minors being male, and thus paint an inaccurate picture of trafficking in the UK.</p>				<p>See section 7</p> <p>Accepted. Paragraph 2.9 amended accordingly.</p> <p>Not accepted. This guidance is in relation to adult victims. Separate guidance on the welfare and safeguarding of child victims of human trafficking was issued by DHSSPS and PSNI in February 2011. A link to that guidance is included in the guidance for adult victims.</p> <p>No change. The statistical breakdown at paragraph 2.7 separates the numbers of female, male and minor potential victims.</p>

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SECTION 2

Organisation	What is Human Trafficking? (Paras 2.1 – 2.12) Did you find this helpful? If not how might it be improved?	Differences between Human Trafficking and People Smuggling (Paras 2.13 - 2.15) Did you find this helpful? If not how might it be improved?	The EU Directive on Human Trafficking (Paras 2.16 – 2.17) Did you find this helpful? If not how might it be improved?	Any other comments?	Way Forward

SECTION THREE

Organisation	Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?	Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?	Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?	Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?	Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?	Way Forward
PSNI		It may be considered that a sentence should be added to 3.4. "Failing to engage the PSNI as a First Responder and at an early stage, may present additional risks to the potential victim of human trafficking and may indeed lead to them being re-trafficked if appropriate support services are not engaged."			Each section is helpful in nature.	Accepted. Paragraph 3.4 has been amended.
VSNi	Our organisation welcomes the recognition of the need for the early identification of victims. However, given the complexity of the Human Trafficking Indicators as detailed in Appendix 1 (pg36) and the recognised requirement to build a rapport with potential victims (Para 3.5, Pg 9), we would contend that the guidance should include some indication of the training available to staff in this regard, who will deliver it and how staff can seek advice and support.	We fully support the statement contained in Paragraph 3.6 (Pg 9) that the role of the interpreter is vital. We further agree with the stated guidance that his individual should be independent, trained, vetted, quality assured, culturally independent and able to communicate sympathetically and effectively with the victim. (Para 3.5, pg 9). We also support the recognition that given the potentially sensitive nature of the evidence, female victims may prefer to speak to a female interpreter. It would therefore seem appropriate to include within the guidance some indication of how staff can access these services. This may be particularly pertinent for voluntary sector organisations where costs can be prohibitive.	VSNi is of the strongly held opinion that ensuring the confidential handling and secure information between agencies is of vital importance.	It is essential that all agencies and agency staff involved in these processes are fully cognisant of the existing policies and protocols in respect of information sharing and that practices are consistent and regularly scrutinised.		As noted earlier, measures are in place within PSNI and the HSC Board to address training issues.  PSNI and HSC Trusts have contracts and procedures in place for staff to access interpreting and translation services when required. These contracts do not extend to voluntary sector organisations who should have their own arrangements in place.

**SECTION THREE**

<p><b>Organisation</b></p>	<p>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?</p>	<p>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?</p>	<p>Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?</p>	<p>Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?</p>	<p>Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?</p>	<p><b>Way Forward</b></p>
<p><b>WHSTC Named Nursing Safeguarding</b></p>	<p>Clear and concise, checklist at appendix 1 very useful and could be utilised for training purposes.</p>	<p>Very useful, however would suggest including a referral pathway here in box/arrow format. 3.4. directs referral to PSNI, many health care staff would refer to social services in first instance.</p>	<p>Clear</p>	<p>Clear – it may be useful to insert a footnote re regional information sharing policy from DHSSPS here.</p>	<p>Clear.</p>	<p>No change – paragraphs 3.4 and 7.5 recommend HSC Trust staff notify PSNI in these cases.  DHSSPS to check on the policy referred to.</p>
<p><b>SHSCT</b></p>	<p>All HSC frontline staff will require awareness raising training which has resource implications. Will this form part of a regional training strategy to ensure consistency of approach and how will it be linked to safeguarding training? In the case of trusts and police should such training be multiagency? Who will be responsible for overseeing this training within the Independent/Voluntary sector partners? Will Trusts be responsible for this in relation to contracted service providers?</p>	<p>At what point in this process is the decision to appoint an interpreter taken? Trusts have procedures in place for engaging the services of approved interpreters in communicating with individuals during assessment and care planning processes. The decision to appoint an interpreter in suspected human trafficking should be initiated by the PSNI following reporting of concerns. This will ensure any subsequent police investigation is not comprised. It would be useful if this can be clarified. This also applies to the provision of specialist legal advice. A flow chart would be useful in sequencing the anticipated process from alerting of concerns through to potential outcomes. The role of the new SARC could be referenced in this process.</p>	<p>3.12. seems to suggest the trafficked person's "expectation of confidentiality" provides them with a veto on referral to the PSNI and is at odds with section 3.4. It is also at odds with the regional Joint Protocol Procedures and the duty to refer "reportable offences"? Is it possible to provide greater clarity around this issue?</p>	<p>Experience of adult safeguarding and MARAC highlights the complexity and anxiety that surrounds information sharing between agencies. Is this an opportunity to provide guidance?</p>	<p>Provides clarity on the role of First Responder.</p>	<p>As noted earlier, measures are in place within PSNI and the HSC Board to address training issues.  Paragraph 3.5 (on the role of the First Responder) states that an interpreter may be needed from the outset.  Not accepted. Paragraph 3.12 states very clearly that concerns should be shared with PSNI and that victims should be provided with information and explanation.  Guidance on information sharing and confidentiality is provided in the guidance document. No further change at this time.</p>

SECTION THREE

Organisation	Sets out the importance of the early identification of victims (Paras 3.1 – 3.3)  Did you find this helpful? If not how might it be improved?	Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11)  Did you find this helpful? If not how might it be improved?	Addresses the subject of confidentiality (Paras 3.12 – 3.13)  Did you find this helpful? If not how might it be improved?	Deals with information sharing (Paras 3.14 – 3.15)  Did you find this helpful? If not how might it be improved?	Sets out the role of First Responder (Paras 3.16 – 3.18)  Did you find this helpful? If not how might it be improved?	Way Forward
<p><b>STEP</b></p> <p>Challenging and direct questioning too early is very likely to alienate the victim and may re-traumatise the victim. Challenging a victim's veracity, treating the victim as a suspect or showing doubt or signs of disbelief are likely to remind him or her of the defensive position they held during the trafficking ordeal. This is likely to destroy any chance of cooperation.</p> <p>It must also be noted that the trafficked person could face the possibility of secondary victimisation or trauma in the court room. Trafficked victims are seen as potential witnesses for the prosecution thus tools for the law enforcement. They are pressed to give their testimonies, they are obliged to testify in the presence of the defendant, they have to repeat their history several times in detail, they may be asked intimidating questions, and anonymity is not guaranteed.</p>	<p>Para 3.4. Some organisations have confidentiality policies and practices that would prevent them from referring a case to the PSNI. STEP cannot refer a case to the PSNI without our clients consent.</p> <p>Para 3.7. It is our view that this would not be acceptable as in many cases the initial point of contact is a person without the requisite training in conducting trafficking cases. As the evidence obtained may subsequently be used in immigration or criminal proceedings, it is essential that it be collected in a professional manner to minimise the risk of damaging any evidence. The need for specialist legal advice should be highlighted specifically. If the victim is a UK/EEA national, specialist immigration advice should be sought and obtained. The provision of legal assistance and representation for trafficked persons is critical to protect, support and inform individuals of their rights.</p>	<p>Paragraphs 3.14 and 3.15, the sharing of information can be very beneficial to victims to avoid re-traumatisation and is indeed good practice. It is essential that the victim is only required to provide their account to an appropriately trained professional.</p> <p>Traumatic experiences suffered by victims of trafficking are often complex, multiple and can occur over a long period of time. For many individuals who are trafficked abuse or other trauma-inducing events may have started long before the trafficking. No two victims of trafficking are the same and the impact trafficking has upon each individual varies. You cannot make assumptions about how individuals might or should react. You must treat each person as an individual and on his or her own merit.</p>	<p>The DHSSPS is a First Responder according to the SOCA website.<sup>2</sup> Other First Responders in Northern Ireland include Migrant Helpline, Gangmasters Licensing Authority and the Police Service of Northern Ireland. Despite the DHSSPS being listed as a First Responder, this draft guidance suggests a much more weakened role for the Department by giving Trust staff a 'referring role' only.</p> <p>S.T.E.P strongly objects to this approach as we believe that Trust staff should act as First Responders. The National Referral Mechanism system (hereinafter NRM) was created to ensure that potential victims of human trafficking were afforded different 'routes' into the trafficking determination process and the protections this offers.</p> <p>It is very important to note that entry into the NRM cannot be restricted in</p>	<p>Paragraphs 3.5 – 3.11 (in particular) highlight the sensitivity that will be required and the need to avoid causing undue distress to the victim.</p> <p>Court processes are not within the scope of this guidance, but the Public Prosecution Services' policy on prosecuting cases of human trafficking, to be published in October, includes information on support for victims before and during a court trial.</p> <p>The guidance does not place a duty on a Non Government Organisation to share information without the client's consent. Paragraph 3.12 has been amended.</p> <p>Accepted. Paragraph 3.7 has been amended.</p> <p>Paragraph 2.11 states very clearly that no two cases of</p>		

<sup>2</sup> <http://www.soca.gov.uk/about-soca/about-the-ukhtrc-national-referral-mechanism>

SECTION THREE

<p>Organisation</p>	<p>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?</p>	<p>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?</p>	<p>Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?</p>	<p>Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?</p>	<p>Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?</p>	<p>Way Forward</p>
					<p>Northern Ireland to the PSNI. Some victims of human trafficking may be distrustful of state officials. Thus, for some, having to discuss their experiences with the police in the first instance would certainly act as a powerful deterrent. It is imperative that the DHSSPS take on the role as First Responder to ensure that victims receive the requisite support and protections. The victim should not feel pressured into going to the police in the first instance.</p> <p>It is our view that if the numbers of First Responders are restricted in Northern Ireland potential victims will be placed at a serious disadvantage compared to victims identified in other parts of the United Kingdom.</p> <p>There is indeed confusion as to who the First Responders are in Northern Ireland. This guidance undoubtedly lends to the confusion. The Department of Justice</p>	<p>trafficking are the same and that the impact it has on individuals will vary from case to case.</p> <p>A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.</p> <p>The DOJ has agreed to raise awareness of NI First responders.</p>

SECTION THREE

<p>Organisation</p>	<p>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?</p>	<p>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?</p>	<p>Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?</p>	<p>Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?</p>	<p>Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?</p>	<p>Way Forward</p>
					<p>should provide a conclusive list of First Responders in Northern Ireland. This list should be incorporated into the guidance for clarification purposes.  The DHSSPS has a key role to play in the trafficking process. Trust staff should have a more proactive role throughout this process. Trust staff should make referrals, where appropriate and with the victim's consent, to service providers such as legal advisers. There are instances where it is feasible for the victim to be accommodated by Social Services. In any event, Social Services should be on hand throughout the entire process, particularly the reflection and recovery process and liaise with Migrant Help and Women's Aid support workers where appropriate to secure access to specialist services. If a conclusive grounds decision is reached, then Social Services should play a vital role in assessing continued need</p>	

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Organisation	Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?	Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?	Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?	Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?	Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?	Way Forward
BHSCT			Para 3.12, the guidance refers to the boundaries of confidentiality – every service user or client is fundamentally entitled to confidentiality however it is important that if it is justifiable in terms of potential risk to the victim or other people, that disclosure may be necessary to the relevant authorities. The Trust would recommend that whilst the guidance advises practitioners to be open and honest, it is important that it also advises them to record their considerations of the individual's human rights and why it was necessary to contravene Article 8: Right to Private life in the interests of safety.		and securing after-care.	Accepted. Paragraph 3.12 has been amended.
Migrant Help	Yes	Yes	Yes	Yes	Yes. Other 1 <sup>st</sup> Responders include UKBA, GLA and Migrant Help	A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.



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<p>LCNI</p> <p>There is scope for confusion as to the role of the person who carries out the 'early identification' and the role of the First Responder. The guidance requires any person who has a concern that a person may be a victim of trafficking to refer what they know about the case to the PSNI (3.4). Some organisations' confidentiality practices and policies will prevent them from referring the case in such instances. For example, generally, the Law Centre will not refer any matters to a statutory agency (or any body) without our client's consent. If we were to do so, we would be in breach of legal professional standards. This means that there have been instances where our caseworkers suspect human trafficking is taking place yet the potential victim refuses to take the case further. This can be deeply frustrating for our staff, however, we must always act in accordance with our professional and legal obligations to keep the affairs of our clients confidential. Only in exceptional circumstances can this general obligation of confidence be overridden. Organisations such as the Law Centre will not therefore be able to completely adhere to the guidance. As discussed above, this could call into question the effectiveness of the guidance.</p>					<p>It is still unclear to us whether DHSSPS sees itself as a First Responder. The SOCA website lists DHSSPS as a First Responder, along with SOCA / UKHTC, Local Authorities, UK Border Agency, POPPY Project, TARA Project (Scotland), Migrant Helpline, Kalayaan, Medaille Trust, Salvation Army, Gangmasters Licensing Authority, UK police forces, NSPCC/CTAIL, Local Authority Children's Services, Barnardo's, Northern Ireland Public Safety and Unseen.<sup>3</sup> And yet, despite DHSSPS being listed here, this guidance suggests a much diminished role for the Department by giving Trust Staff a 'referring role' only. Although the guidance does acknowledge that a range of agencies in Northern Ireland are designated as First Responders, it states that the role is 'primarily performed' by the PSNI for adult victims of trafficking.</p>	<p>A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance. Paragraph 3.17 has been amended to apply to all First Responders but it is still the case that the role is, at present, primarily carried out by PSNI and we do not accept that a change is currently needed to paragraph 3.16. This will be kept under review.</p> <p>The guidance does not place a duty on a Non Government Organisation to share information without the client's consent.</p> <p>Paragraph 3.7 has been amended and now specifies that it should be appropriately trained staff who obtain the victim's account. Existing joint protocols minimise the risk of re-traumatising the victim. We would contend that those</p>

<sup>3</sup>Note that DHSSPS is incorrectly referred to as Northern Ireland DHSS <http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism>

<sup>4</sup><http://www.soca.gov.uk/about-soca/about-the-ukhtc/national-referral-mechanism/statistics>

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<p><b>Organisation</b></p>	<p><b>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3)</b> <b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11)</b> <b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Addresses the subject of confidentiality (Paras 3.12 – 3.13)</b> <b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Deals with information sharing (Paras 3.14 – 3.15)</b> <b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Sets out the role of First Responder (Paras 3.16 – 3.18)</b> <b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Way Forward</b></p>
	<p>The guidance also recommends that this person (at the early identification stage) obtains as 'full account as they can' about the trafficking case (3.7). We believe that this would be inappropriate as the person who raises the alarm may not have any training in conducting trafficking cases e.g. a church group, a health and safety inspector, Gangmasters licensing official, etc. As the guidance highlights, evidence obtained may subsequently be used in immigration or criminal proceedings. It is therefore essential that evidence is collected in a professional manner so as to minimise the risk of re-traumatising the victim and of damaging any evidence. Instead the guidance should encourage the person to obtain basic essential details only. This could include: name, date of birth, gender, nationality, whether an interpreter is required and full contact details. The person should contact the First Responder immediately and should notify the First Responder of any trafficking indicators. It might also be useful for the guidance to outline what practical steps the 'early identifier' should take in order to minimise risks while the First Responder is being notified. For example, the early identifier might make arrangements for the victim to wait in a safe place. Perhaps the PSNI could best advise on this?</p>				<p>(3.16). Elsewhere, the guidance indicates that the PSNI have responsibility for adult victims (4.14) and indeed the guidance channels all adult trafficking cases to the police (3.4). We feel very strongly that the PSNI should not be sole First Responders for adult victims in Northern Ireland. We therefore strongly recommend that Trust staff and NGOs (such as Migrant Help) should continue to act as First Responders and we urge the guidance to be amended to reflect this. The National Referral Model was designed in a way to ensure that potential victims have different 'routes' into the trafficking determination process and the protections it offers. Consequently a range of First Responders were appointed including statutory agencies, such as the police and immigration, as well as social services and NGOs. The most recent National Referral Mechanism figures issued by SOCA</p>	<p>who have not been trained should not be questioning potential victims to obtain their account but should contact Crimestoppers or the police or another First Responder to report their concerns.  A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.</p>

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					<p>comprising October to December 2011<sup>4</sup> show that the 151 victims were referred by a variety of First Responders:</p> <ul style="list-style-type: none"> <li>- 79 victims referred by UKBA = 52%</li> <li>- 35 victims referred by NGOs = 23%</li> <li>- 32 victims referred by police = 21%</li> <li>- 5 victims referred by local authority = 3%</li> </ul> <p>We have no doubt that these figures demonstrate the importance of ensuring that there are different 'routes' into the NRM. We are therefore deeply concerned that Northern Ireland is effectively seeking to restrict entry into the NRM through the PSNI as nationally, only a fifth of victims come through this route. While we appreciate the work that the PSNI is doing in Northern Ireland and we are proud of our excellent working relationship with PSNI anti-trafficking officers, we are mindful that, for a variety of reasons, some victims of</p>	

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					<p>trafficking may have a deep distrust of state officials. For some, having to speak to the police in the first instance would act as a powerful deterrent. We take the view, therefore, that the current guidance will place potential victims in Northern Ireland at a considerable disadvantage compared to victims identified in Great Britain. This is a very serious matter that warrants considerable reviewing as it could significantly undermine the Justice Minister's commitments to tackling trafficking. Over recent years, we have repeatedly highlighted our concern to the Department of Justice and its predecessors that there is confusion as to who are the First Responders in Northern Ireland. This guidance does not remedy this. The SOCA website lists a number of organisations designated as First Responders, not all of which will act in Northern Ireland. Accordingly, we ask the Department of</p>	

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					<p>Justice to provide a conclusive list of First Responders in Northern Ireland. The list should be incorporated in the guidance. If the organisations listed <i>cannot</i> act, we think it would be appropriate for DOJ to request that SOCA publishes a separate list for Northern Ireland. There is otherwise a risk that someone in Northern Ireland might contact one of the organisations listed by SOCA, which does not perform a First Responder role in Northern Ireland (e.g. Salvation Army), and the person might <i>think</i> a referral has been made. This could of course have very dangerous implications for victims. As highlighted above, we strongly believe that DHSSPS has a central role to play in the trafficking process. Accordingly, the guidance would benefit from re-drafting to make it clear that Trust Staff should take a proactive approach <i>throughout</i> the process. Trust staff should not only be able to recognise</p>	

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					<p>trafficking indicators but should also be equipped to act as a First Responder for adult victims. In addition, Trust staff should make referrals, where relevant and with the victim's consent, to service providers such as legal advisers. Usually, the victim will be accommodated by Migrant Help or Women's Aid, yet there may be instances where it is appropriate for the victim to be accommodated by social services and therefore the Department will have a role in this. Either way, social services should be on hand throughout the reflection and recovery process and liaise with Migrant Help/Women's Aid Support Workers to secure access to specialist services where appropriate and to monitor services that are delivered. If the victim is given a positive Conclusion Grounds decision then social services should play a crucial role in assessing continued need and securing after-care and follow-on support. Even</p>	

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<p>LCNI</p>	<p>Please see the above section, 'Early Identification of Victims' and 'First Responders' This chapter needs clarity especially with regards to consent. There are two stages where consent is crucial:</p>	<p>Para 3.5 – 3.6 The information on interpreters is very helpful although it might make sense to combine all this information into one paragraph Para 3.7 Please see the</p>	<p>Para 3.12. It might be better to re-word the first sentence. Rather than a victim having an 'expectation of confidentiality', the state has a duty to protect the</p>	<p>It might be useful to state that the sharing of information can be beneficial to victims to avoid re-traumatisation. Indeed, this can be good practice. As there are potentially many people involved in trafficking cases, the victim</p>	<p>where the victim receives a negative Conclusive Grounds decision, s/he may still be eligible for some services, and social services are likely to play a crucial role in securing these. In light of the above, we request that: - Department of Justice publishes an authoritative list of First Responders; - The list includes DHSSPS and NGOs; and - DHSSPS plays a much bigger role in the trafficking process. However, if DoJ/DHSSPS opt not to make these fundamental changes, we would ask you to consider these discrete points.</p>	<p>The guidance is primarily for HSC Trust and PSNI staff and existing information sharing protocols will apply. The guidance encourages other public facing agencies to engage with the police.</p>

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<p><b>Organisation</b></p>	<p><b>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p> <ul style="list-style-type: none"> <li>- First, consent to refer the case to a First Responder by the person who identifies the victim</li> <li>- Secondly, consent to refer the case to the NRM by the First Responder</li> </ul> <p>The guidance currently requires DHSSPS to refer cases to PSNI. The Trust staff member should obtain consent to do this. We acknowledge that, where a victim refuses to consent to a police referral, there may be instances where other factors e.g. public safety would override consent. In the Law Centre's case, there are very few instances where we would act contrary to our client's instructions, however, we recognise this is likely to be different for HSC Trusts.</p> <p>The guidance should therefore provide a clear explanation as to the circumstances, where consent is not given, the staff member should refer to the police. We think this would be very helpful.</p> <p>Specialist legal advice will help ensure that consent is truly informed. It is for this reason that we seek to prioritise access to legal advice.</p> <p>Para 3.2 Perhaps expand list of people who might be involved in</p>	<p><b>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p> <p>above section, 'Early Identification of Victims' and 'First Responders'</p> <p>We do not think it is appropriate to include the person who identifies the victim to obtain as 'full an account as they can' about the trafficking case. This may risk in re-traumatising and may risk damaging subsequent criminal and immigration proceedings.</p> <p>There should be a standalone paragraph on the need for specialist legal advice and which also highlights the role of the Social Worker in obtaining such advice.</p> <p>If the victim of trafficking is not a UK/Irish/EEA national (or where there is any doubt as to the victim's nationality), specialist immigration advice should be obtained.</p> <p>It would be helpful to add that, on some occasions, more than one solicitor might act in case e.g. criminal defence solicitor, immigration solicitor, family solicitor, civil solicitor, etc. The Social Worker should be aware of this and should</p>	<p><b>Addresses the subject of confidentiality (Paras 3.12 – 3.13)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p> <p>victim's privacy (i.e. Art 11&amp;30 of CoE Convention &amp; Art 6.1 Palermo Protocol). Confidentiality is therefore a requirement. Clearly however there are exceptions to data protection and there are instances where information can lawfully be shared without the subject's consent. The Northern Ireland Adult Safeguarding Partnership's Guidelines on Legal Issues surrounding Vulnerable Adults has useful content about information sharing and vulnerable adults and might be a useful source to reference in this paragraph.<sup>5</sup></p> <p>Para 3.13. The term 'adequate information' should be reworded. Victims have a right to immediate information: <i>Each Party shall ensure that victims have access, as from their first contact with the</i></p>	<p><b>Deals with information sharing (Paras 3.14 – 3.15)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p> <p>should not have to provide their account again and again. This is why it is essential that the victim is only required to provide their account to an appropriately trained professional (see comments on paragraph 3.7).</p>	<p><b>Sets out the role of First Responder (Paras 3.16 – 3.18)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p> <p>a child does not have to consent to be referred into the NRM.</p> <p>Also, the guidance should state that even if the adult does not wish to be referred into NRM, they may still be entitled to/benefit from some support services and so the practitioner should continue to try and assist e.g. accessing medical services, legal advice, etc. A full needs assessment might be appropriate here.</p>	<p><b>Way Forward</b></p> <p>Decisions relating to maintaining confidentiality and information sharing must be recorded and justifiable.</p> <p>Accepted. Paragraphs 3.4 and 3.7 have been amended to address these concerns.</p> <p>Accepted. Paragraph 3.2 has been amended to include transport staff in the list of those who may find themselves in contact with potential victims.</p>
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<sup>5</sup> See: <http://www.hscboard.hscni.net/publications/201514/201514%20Mby%202012%20-%20%20Guidelines%20on%20Potential%20Legal%20Issues%20Vulnerable%20Adults%20-%20PDF%2020214KB.pdf> page 10



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	<p>early identification of victims to include transport staff (including at airports, at train stations, bus drivers, taxi drivers, etc) as well as Harbour Police, Environmental Health Officers, Community Officers, etc.</p>	<p>liaise where necessary.</p>	<p><i>competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand. (Art 15.1, Palermo Protocol)</i>  This obligation falls on each State Party, which in this devolved administration falls to Department of Justice. It is therefore incumbent on the Department to ensure that information is available for victims such as a leaflet that informs the victim of their legal rights and entitlements in terms of accessing legal advice, healthcare, accommodation, etc. Such a leaflet should be given to all public-facing staff (including Trust staff) so as to ensure it is made to available to an identified victim at the earliest opportunity.  Amnesty International understands that DOJ is committed to producing this leaflet, in partnership, as a next</p>			<p>The Department of Justice is committed to producing a leaflet for victims and will work with Amnesty International to develop the leaflet later this year.</p>

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<b>Adult Safeguarding Specialist WHSCT</b>	Appendix 1 is very informative	It is useful to know the lead responsible agency to take the case forward. It may be useful to include the interfaces with the adult protection Joint Protocol procedure and how this could be conducted. I.e the ABE interview and the use of MARAC's	stage following this guidance. This should be done promptly. If DOJ decides not to produce a leaflet, this paragraph should be reworded to make it clear that 'the opportunity to discuss options' means prompt access to specialist legal advice.	as before	This is useful from a trust perspective.	Paragraph 3.4 has been amended to provide clarity.  Issues of consent are set out in paragraphs 6.10 – 6.12 of the guidance

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<p><b>NIPSA</b></p>			<p>One of the key findings from The Anti-Trafficking Monitoring Groups reports in 2010 and 2013<sup>6</sup> and a scoping study carried out by the Northern Ireland Human Rights Commission and the Equality Commission into the nature and extent of human trafficking in Northern Ireland<sup>7</sup> was the lack of available data. The researchers found there were no systems of data collection that would allow for a comprehensive assessment of the scale and nature of human trafficking in Northern Ireland. The Convention requires States Parties to conduct research and collect, analyse and share information on</p>		<p>We note in paragraph 3.16 the primary role as First Responders in relation to adult victims is with the PSNI. However reference is made to other agencies have been designated. NIPSA would like to seek clarification on who these agencies are. We would also support the recommendations contained in the Anti-Trafficking Monitoring Group report<sup>8</sup> that other organisations, such as Women's Aid, who have the expertise in supporting trafficked persons are designated as First Responders, in the same way that Migrant Help has been designated.</p>	<p>The UK Human Trafficking Centre is the central depository for data collection across the United Kingdom. The Inter Departmental Ministerial Group on Human Trafficking will publish a report on the extent and nature of human trafficking across the United Kingdom in October. A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance. An organisation seeking designation as a First responder must apply to the National Referral Mechanism Oversight Group for assessment.</p>

<sup>6</sup> The Anti-Trafficking Monitoring Group: All Changes Preventing Trafficking in the UK, Devolved Polices (2012).

<sup>7</sup> NIHR and ECNI: The Nature and Extent of Human Trafficking in Northern Ireland – A Scoping Study by Institute of Conflict Research 2009

<sup>8</sup> Ibid, pages 4 and 5.

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Organisation	Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?	Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?	Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?	Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?	Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?	Way Forward
			<p>trafficking, in order that the problem is understood and that prevention efforts are targeted and based on evidence. It is therefore important that an information sharing protocol is established and incorporated within this guidance which will allow for a multi-agency approach for the collection and publishing of relevant data on the extent of human trafficking in Northern Ireland, the number of persons identified as presumed trafficked persons (initially and also as a result of both "reasonable grounds" and conclusive decisions) and the number of traffickers arrested, charged and successfully prosecuted under trafficking and trafficking-related offences.</p>			
<b>CSU</b>	Para 3.2. in the list of service providers that may find themselves in	Para 3.5. There are a couple of punctuation errors in the				Accepted. Transport workers have been added to

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<p><b>Organisation</b></p> <p><b>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Addresses the subject of confidentiality (Paras 3.12 – 3.13)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Deals with information sharing (Paras 3.14 – 3.15)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Sets out the role of First Responder (Paras 3.16 – 3.18)</b></p> <p><b>Did you find this helpful? If not how might it be improved?</b></p>	<p><b>Way Forward</b></p>
<p>contact with people who could be PVOs, would it be useful to include "transport workers" (taxi drivers, airport, ferry/dock, train staff)?</p>	<p>final sentence (need a comma after "evidence" and a full-stop at end of sentence (currently a comma).</p>				<p>Paragraph 3.2. Punctuation errors have been corrected.</p>
<p>It may be useful to expand the list of people who may be involved in the early identification of victims in paragraph 3.2, to include airport staff, bus and train drivers, Harbour Police, Community Officers, and other such personnel.</p>	<p>Women's Aid is extremely concerned that this guidance appears to effectively waive the rights of victims to refuse to give information to the PSNI. Paragraph 3.4 states that all practitioners, agencies and organisations that discover a victim of trafficking should "refer what they know about the case to the PSNI". However, if a victim decides not to disclose to the PSNI or consent to reporting the trafficking, Women's Aid must respect the wishes of that victim and the confidentiality of their disclosure. We therefore seek clarification on what the term "refer" means in this case. If it means to inform the PSNI of the existence of a victim for statistical purposes, Women's Aid would be willing to do so. But it would be highly unethical and a breach of a victim's trust to refer a case to the PSNI if a victim has expressly asked that we do not do so, and Women's Aid would have to respect the wishes of the victim in this instance.</p>	<p>Women's Aid wish to point out the inaccurate description of the "expectation of confidentiality" at paragraph 3.12. Confidentiality regarding any disclosures is not a mere expectation for victims, it is a right. As it stands, the wording in this paragraph does not adequately convey the obligation of the State to protect the privacy and the right of confidentiality of the victim subject to certain exceptions, as outlined in Articles 11 and 30 of the Convention and in the Palermo Protocol.</p>		<p>Women's Aid would like to seek clarification on who is currently a first responder. The guidance names the PSNI as the main first responder, but says that a "number of agencies" are first responders (at paragraph 3.16). We know that Migrant Help is a First Responder in Northern Ireland, however it is not clear what other agencies are also First Responders. It would be helpful to identify who all first responders are, so that there is no uncertainty as to who should be contacted in the event of discovering a victim of human trafficking. It would also be useful to outline what kind of information these other First Responders should provide to the PSNI if a victim is discovered and notwithstanding the right of the victim to refuse to cooperate in an investigation or involve police. For</p>	<p>Paragraph 3.2 has been amended to include transport staff.</p> <p>The guidance is primarily for HSC Trust and PSNI staff and existing information sharing protocols will apply. The guidance encourages other public facing agencies to engage with the police. Decisions relating to maintaining confidentiality and information sharing must be recorded and justifiable.</p> <p>Paragraph 3.12 states that victims should have an expectation of confidentiality. This will not, however, override the requirement for HSC Trust and PSNI to invoke the Safeguarding Vulnerable Adults procedure and associated Protocol for Joint Investigation when appropriate.</p> <p>A list of First Responders is available on the SOCA website. A link to the SOCA website has been included in the guidance.</p>

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<p>Organisation</p>	<p>Sets out the importance of the early identification of victims (Paras 3.1 – 3.3) Did you find this helpful? If not how might it be improved?</p>	<p>Offers guidance on what to do if Human Trafficking is suspected or disclosed (Paras 3.4 – 3.11) Did you find this helpful? If not how might it be improved?</p>	<p>Addresses the subject of confidentiality (Paras 3.12 – 3.13) Did you find this helpful? If not how might it be improved?</p>	<p>Deals with information sharing (Paras 3.14 – 3.15) Did you find this helpful? If not how might it be improved?</p>	<p>Sets out the role of First Responder (Paras 3.16 – 3.18) Did you find this helpful? If not how might it be improved?</p>	<p>Way Forward</p>
	<p>We also have strong reservations about the requirement for staff of any organisation who suspect or discover a victim of trafficking to get as full an account as they can (paragraph 3.7). This advice presupposes that the first person to come into contact with a victim of trafficking would be a police officer or other trained personnel with expertise in trafficking. However, we have found that this is often not the case. In fact, victims may be discovered by a diverse range of persons and groups, many of whom may have no expertise in dealing with victims and conducting interviews of this kind. Such untrained personnel should not be expected to interview a victim or gather a full account of the victim's ordeal. These interviews should only be carried out by trained experts, who are part of the support infrastructure for victims of human trafficking. This ensures that evidence is documented and collected appropriately, and avoids re-traumatising the victim by forcing them to re-tell their story repeatedly to first</p>	<p>We also have strong reservations about the requirement for staff of any organisation who suspect or discover a victim of trafficking to get as full an account as they can (paragraph 3.7). This advice presupposes that the first person to come into contact with a victim of trafficking would be a police officer or other trained personnel with expertise in trafficking. However, we have found that this is often not the case. In fact, victims may be discovered by a diverse range of persons and groups, many of whom may have no expertise in dealing with victims and conducting interviews of this kind. Such untrained personnel should not be expected to interview a victim or gather a full account of the victim's ordeal. These interviews should only be carried out by trained experts, who are part of the support infrastructure for victims of human trafficking. This ensures that evidence is documented and collected appropriately, and avoids re-traumatising the victim by forcing them to re-tell their story repeatedly to first</p>			<p>example, the PSNI may wish to be informed of the existence of a new victim for statistical purposes, and it would be prudent to include the procedure for statistics collection with other first responders in this guidance.  It is especially important to list other first responders so that there is no ambiguity over how to proceed when an identified victim of trafficking does not want to go to the police. We are aware that in GB, there are several other first responder organisations, such as Barnardos. We believe that it would be useful to look at best practice in GB, and instigate a discussion on whether other NGOs in Northern Ireland should be designated as first responders.</p>	<p>Paragraph 3.7 has been amended to clarify that the victim's account should be taken by trained personnel.</p>

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		<p>responders and support workers. Regarding the procedure outlined for responding to victims at paragraph 3.5, we would highlight the serious lack of face-to-face interpreters available in Northern Ireland. Currently, Migrant Help's Clear Voice provide telephone interpreters when required in cases involving trafficking victims. However they do not have the capabilities to supply face-to-face interpreters. The draft guidance outlines the standards that interpreters must meet, and in our eyes these standards are entirely appropriate. However, it may be impossible to find appropriate interpreters in accordance with the guidance, and Women's Aid are of the opinion that this is something that must be addressed as a matter of urgency. We urge that an effective system for accessing face-to-face interpreters that meet the requirements of this guidance is set up without delay.</p>				<p>HSC Trusts and PSNI, to whom this guidance is primarily aimed, have contracts in place for their staff to access interpreting and translation services.</p>

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UKHTC					The only other comment that I would make relates to the NRM form attached at the back. I realise that the Home Office site is linked and the document is there principally as an illustration, but they are often changed by the HO, and versions quickly become out of date. Therefore if the form is to be used I would recommend a water mark showing it is an example. Finally the forms can also be downloaded by the UKHTC site, offering another option should the HO site be down.	Accepted. The form has been marked as a sample. The guidance includes a link to the Section 4 amended accordingly.
PSNI					A note of caution should be added to 4.12 that the most recent publication version of the NRM should be used by First Responders, accessed from Home Office website.	Accepted. Paragraph 4.12 amended.
VSNI	Our organisation found all aspects of Section 4 of the document to be helpful.		We would however seek further clarification in respect of the support available to those individuals identified as having been the victim of Human Trafficking, who after the 45 day recovery and reflection period may choose not to cooperate with an investigation. In particular, during the period in which they may seek leave to remain in the UK, will they lose their status as a victim of Human Trafficking? Does this individual then have no recourse to public funds and if so, do those			A person who has been confirmed to be a victim of human trafficking, is not willing to co-operate with law enforcement and has no right to remain in the UK may apply for leave to remain via an immigration application to the UK Border Agency.



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Named Nurse Safeguarding WHSCT SHSCT	Helpful	Helpful	Helpful	Helpful	Helpful	
	Provides a clear description of the NRM Should the NRM Form include a section on Adult Safeguarding/Joint Protocol procedures? (Q5)	Provides a clear description of the role of the CA.	organisations providing support lose their source of funding? In addition to cost implications for support services and the humanitarian consequences in this regard, there is the additional danger that individuals may be exposed to the potential for further abuse and exploitation.	Provides a clear description of the "conclusive grounds" decision.	This will always be a PSNI officer.	The NRM Form is used by all First Responders across the United Kingdom. It would not be appropriate to include information on issues specific to one jurisdiction.  The potential victim, on referral to the NRM, accesses the support provided by Migrant help/Women's Aid.  The First Responder may not always be PSNI. A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.

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<p>Organisation</p>	<p>The National Referral Mechanism (NRM) (Paras 4.1 – 4.3) Did you find this helpful? If not how might it be improved?</p>	<p>The Competent Authorities and their role (Paras 4.4 – 4.5) Did you find this helpful? If not how might it be improved?</p>	<p>The basis of “Reasonable Grounds” decisions (Paras 4.6 – 4.9) Did you find this helpful? If not how might it be improved?</p>	<p>The basis of “Conclusive Grounds” decisions (Paras 4.10 – 4.11) Did you find this helpful? If not how might it be improved?</p>	<p>The use of the NRM Report Form (Paras 4.12 – 4.16)</p>	<p>Way Forward</p>
<p>STEP</p>			<p>Paragraph 4.9: “.....Being a victim does not automatically entitle someone to remain in the UK indefinitely.....Where a recognised victim of trafficking does not qualify to remain in the UK, the expectation is that they return to their own country.”  This statement is overly simplistic and does not acknowledge that States have a positive obligation under Article 4 ECHR to consider whether it is safe for the victim to be returned to his/her home country. Any return must also be in accordance with Article 12 of the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (hereinafter the Trafficking Convention).  The case of <i>Rantsev v Cyprus and Russia</i> (Application no. 25965/04) should be considered here. In this case, the Court found, unanimously, that trafficking in human beings, although not explicitly mentioned in the ECHR, fell within the scope of Article 4 (prohibition of slavery, servitude and forced labour). The</p>			<p>Accepted. Paragraph 4.9 has been amended to include reference to Article 12 of the Convention.</p>
			<p>Court took a much more thorough look at the whole issue of trafficking and clarified the obligations of states in this respect. The Court held the following (para. 284): “The Court considers that the spectrum of safeguards set out in national legislation</p>			

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<b>BHSCT</b>			<i>must be adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking."</i>			
<b>Migrant Help</b>	Yes	The police 'may' be the first responder for adult victims. Other first responders include UKBA, GLA and Migrant Help who are an NGO.	Yes	It is not a pre-requisite that victims of human trafficking during the reflection period engage fully or partially with the criminal justice system.	As to the left. The 1 <sup>st</sup> Responder "May" be the PSNI.	Accepted. A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.
<b>LCNI</b>		Para 4.5. Perhaps replace the final sentence with this: 'This decision is a two-step process'.	As stands, the guidance is incorrect with regards to the Residence Permit. Chart 1 (page 15) indicates that a victim can only be granted a 1 year Residence	Para 4.11 The term 'what happens next will depend on his or her wishes' could be	Para 4.14 See above section on First Responder. We strongly urge the	Accepted. Paragraph 4.5 has been amended. Accepted. Paragraph 4.8

<sup>9</sup> This highlights why a non-police route into the NRM is essential

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			<p>Permit if s/he is willing to cooperate with law enforcement. This is echoed in paragraph 4.8. However, the Convention states:</p> <p>Article 14 – Residence permit</p> <p>1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:</p> <p>a. the competent authority considers that their stay is <b>necessary owing to their personal situation</b>;</p> <p>b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.</p> <p>Therefore the victim’s ‘personal circumstances’ might warrant a Residence Permit to be granted in instances where s/he does not want to be involved in any enforcement proceedings. This approach is confirmed in guidance issued to the Competent Authorities: <i>Potential victims are under no obligation to cooperate with the police themselves and some potential victims may not want the police to be involved at all.<sup>9</sup> This should be carefully considered. In some cases the police may not pursue a case unless the individual engages with them directly. It is not for the Competent Authority to press the police to pursue a criminal investigation</i></p>	<p>improved as there are instances where the result of a case is not the victim’s desired outcome.</p>	<p>guidance to be amended to allow for DHSSPS and NGOs to act as First Responders</p> <p>Paras 4.12-4.16 It might make chronological sense to move the section on the National Report Form up to beginning of Part 4.</p>	<p>has been amended.</p> <p>Accepted. Paragraph 4.11 has been amended.</p> <p>A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.</p> <p>Accepted. The section on the NRM has been moved to the beginning of Chapter 4.</p>

<sup>9</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary>  
<sup>10</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/competent/guidance/competent-guidance?view=Binary>  
<sup>12</sup> <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcases/guidance/competent-guidance?view=Binary>

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			<p>or convince the potential victim to cooperate. In such cases the CA should minute the file with the outcome (p.16)<sup>10</sup> Although it may well be in the public interest for the victim to talk to the police, the Competent Authority can only encourage this; this cannot be a condition of assistance. The lack of cooperation can occur for a variety of reasons including fear of reprisals against family members or a by-product of the victim’s traumatic state. Where the victim is cooperating with the police, the police writes to the Competent Authority to request that a Residence Permit is issued. Where the victim is not cooperating, the Competent Authority can decide to issue a Residence Permit in recognition of the personal circumstances of the victim. Social services could play a key role to play here in providing relevant information to assist in this decision-making process e.g. by highlighting any ongoing treatment and/or commenting on developments, etc. Note that there is no exhaustive list as to what constitutes ‘personal circumstances’.</p> <p>Para 4.7 Amend this paragraph to show that, in addition to being extended, the 45 calendar day recovery and reflection period can be waived in some circumstances.</p> <p>Para 4.8 See above comments on Residence Permit.</p> <p>Also, it may be worth pointing out that some victims may agree to co-operate with law enforcement but may arrange to do this</p>			<p>This suggestion has not been incorporated at this stage but will be considered further.</p> <p>Accepted. Paragraph 4.8 has been amended.</p>

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			<p>from their country of origin; they are therefore not ‘required’ by the police to remain in the UK. This is confirmed in the UKBA guidance (para. 9.12)<sup>11</sup> and the guidance to Competent Authorities (p. 36).<sup>12</sup></p> <p>Para 4.9. ‘There is an expectation that they [a recognised victim of trafficking does not qualify to remain in the UK] return to their own country’.</p> <p>This is overly simplistic and fails to acknowledge that States must consider whether it is safe for a victim to be returned. Any return should be in accordance with Art 12 Trafficking Convention.</p>			Accepted. Paragraph 4.9 has been amended.
<p><b>Adult Safeguarding Specialist WHSCT</b></p>	<p>Section 4 - A question regarding those where the decision is negative and the document makes reference to seeking legal advice. Where and how do those with no access to public funds access this legal advice?</p> <p>The flowchart is very comprehensive and useful to explain to frontline staff the process and timeframes. It may be useful to include section 5.3. and</p>					<p>Chapter 8 of the guidance includes details of organisations who may be able to help.</p> <p>Valid point. We will take this and other comments on the Chart into account when developing a revised version.</p>

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	5.4 information in the chart.					
<b>NIPSA</b>	In a study carried out by the Anti-Trafficking Monitoring Group <sup>13</sup> it called for a more localised NRM in Northern Ireland and a local infrastructure of support in accordance with the obligations of the Convention. NIPSA supports this recommendation as we believe the establishment of a more localised mechanism that reflects the specificity of Northern Ireland’s structures and victims needs is necessary for the effective operation of these arrangements and the provision of comprehensive assistance and protection for victims.					Not accepted. The NRM is a framework that applies across the United Kingdom and was established to meet the requirement placed on Member States to provide such a framework by the EU Directive.  Support for potential victims of human trafficking in Northern Ireland is funded by the Department of Justice and is delivered by Migrant Help and Women’s Aid.
<b>WAFNI</b>			On review of the draft guidance, we have found this section to be the most ambiguous and lacking in practical detail. For example, the guidance makes reference to the UKBA deciding on whether a potential victim can or cannot	Paragraphs 4.12 - 4.14 should be filled in at this stage by the first responder, but they do not advise how to do this	The flow chart on page 15, delineating the process for dealing with adults who have disclose that they have been trafficked, needs to be comprehensive, and must	Not accepted. This document is not intended to be a detailed manual but rather a guide for, primarily, PSNI and HSC Trust staff. The UKBA are guardians of

<sup>13</sup> Northern Ireland section excerpt from the report: “Wrong kind of Victim?” One year on: an analysis of UK resources to protect trafficked persons (2010).

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			<p>remain in the UK on a “case by case basis” (at para 4.9). No clarification is offered as to what criteria the UKBA may use to make the decision.</p> <p>The draft guidance is not clear in what circumstances a recognised victim of trafficking would be required to return to their home country. Paragraph 4.9 states that “where a recognised victim does not qualify to return to the UK, the expectation is that they return to their own country”. However the guidance fails to detail the circumstances in which a recognised victim of trafficking would not qualify to remain in the UK. This raises a number of serious questions. Given the gross abuse of human rights that the victim has endured, and the potential danger of being re-trafficked if returned to a country where local police are unable to protect the victim and their family from traffickers, could victims still be ordered to return to their own country by the UKBA? This outcome may contravene Article 12.2 of the Convention, which states that “each Party shall take due account of the victim’s safety and protection needs.” Therefore, it is our opinion that the draft guidance must provide more details of how the UKBA makes its decisions on whether to return a recognised victim to their home country, and unambiguously state that the UKBA cannot return a victim to their home country if there is any doubt about their safety.</p> <p>In light of the wide discretionary powers of</p>	<p>in the event of late disclosure. NRM forms are not always completed on contact with a victim. In our professional experience, many victims disclose quite late and after prolonged contact with Women’s Aid workers, and at this point the victim has built a trusting rapport with staff. We would urge therefore that there should be a separate procedure for filling out the NRM forms when the victim already has a relationship with a supporting organisation, in order to avail of the knowledge and expertise of that organisation pertaining to the case.</p> <p>We would also recommend that there should be a training requirement for any individual filling out an NRM form. This form is a vital component in the identification process, and should only be filled out by someone who is trained and competent to do so.</p>	<p>be fit to use in all potential situations. At present, this chart does not meet these criteria.</p> <p>The flow chart begins with referral of the case to the Competent Authority. There is no mention of the duty of the first responder to immediately contact Migrant Help’s Helpline, who then deal with male victims and refer all female victims to Women’s Aid’s 24 Hour Domestic Violence Helpline. These vital first steps need to be in the chart.</p>	<p>the asylum process and more detail is provided on the UKBA website, a link to which is included in Chapter 4 of the guidance.</p> <p>Paragraph 4.9 has been amended to include reference to Article 12 of the Convention.</p> <p>The comments made by WAFNI on the Chart are helpful and will be taken into account, along with other comments on the Chart, when we develop a revised version.</p> <p>Designation as a First Responder is granted by the NRM Oversight Group who must be satisfied that the applicant has the necessary competence to fulfil the role including completing the NRM referral form.</p> <p>The Chart currently outlines the NRM process and a potential victim may only be</p>



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<p>Organisation</p>	<p>The National Referral Mechanism (NRM) (Paras 4.1 – 4.3) Did you find this helpful? If not how might it be improved?</p>	<p>The Competent Authorities and their role (Paras 4.4 – 4.5) Did you find this helpful? If not how might it be improved?</p>	<p>The basis of “Reasonable Grounds” decisions (Paras 4.6 – 4.9) Did you find this helpful? If not how might it be improved?</p>	<p>The basis of “Conclusive Grounds” decisions (Paras 4.10 – 4.11) Did you find this helpful? If not how might it be improved?</p>	<p>The use of the NRM Report Form (Paras 4.12 – 4.16)</p>	<p>Way Forward</p>
		<p>the UKBA in making its decisions, and the lack of transparency in the decision-making process, it is extremely alarming that victims have no right to appeal a decision (paragraph 4.7). Instead, they must make an application for judicial review, which is an expensive and burdensome process. Women’s Aid appreciates that the UKBA must be able to carry out its functions effectively and efficiently, but making a discretionary decision without right of appeal denies the victim’s right to due process, and potentially infringes on the UK’s obligations not to remove a victim of trafficking from the jurisdiction under Articles 10, 12 and 14 of the Convention. There must be transparency and accountability of decision-makers to ensure that the rights of the victim are being adequately protected in line with the UK’s international legal obligations, and presently this does not appear to be the case.</p> <p>The draft guidance accurately states at paragraph 2.11 that “victims of trafficking are some of the hardest to reach and most vulnerable victims” and that “time may be needed to establish trust between the victim and helping agencies”. With this in mind, we submit that the 45 day reflection and recovery period for victims, referred to in paragraph 4.7, is insufficient to allow them to properly recover and reflect on their traumatic experience.</p> <p>We fully appreciate that the UK currently grants 45 days, which is longer than the</p>	<p>The flow chart does not currently outline the procedure for when the first responder is not the PSNI, or when the organisation that identifies a victim of trafficking is not a designated first responder. These are all crucial parts of the process for dealing with adult victims of human trafficking and therefore must be clearly documented as part of the process on this chart.</p> <p>The chart does not indicate when the ‘Conclusive Grounds’ decision is made, or what happens in the event that the person is ruled not to be a victim of trafficking. This should be added to the chart.</p>	<p>referred into the process by a designated First Responder. We will, however, take this comment into account when we revise the Chart.</p> <p>The guidance is for potential and confirmed victims of human trafficking. It does not apply to those who are not victims.</p> <p>The comment (relating to paragraphs 4.7 and lack of right of appeal) will be forwarded to the Home Office who have policy responsibility in this area.</p> <p>Not accepted. The support funded by the Department of Justice applies during the reflection and recovery period up to the point that a conclusive grounds decision</p>	<p>The chart indicates that if a</p>	

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		<p>minimum 30 days required by the Convention. However we would draw attention to the Opinion of the European Commission Expert Group on Human Trafficking, which recommends that the reflection period should not be less than 3 months. We would also highlight examples of other comparable jurisdictions who grant a longer period of reflection to victims – for instance, Italy grants victims a 3-6 month temporary residence permit for victims, which can be extended for a further year, under its Immigration Law, and an informal reflection period with no finite limit. Support and protection is not contingent upon cooperation with investigation.</p> <p>In our professional experience, we find that victims do not fully come to terms with the enormity of their trauma within the 45 days. They are bombarded by a series of interviews, interrogations and meetings with police, support workers, UKBA officers, health workers, support workers, solicitors and social workers following a disclosure of trafficking. Often it is not until much later, when the victim is truly able to reflect on and begin to recover from their experience, that they may feel able to make decisions about their future and their willingness to co-operate with police investigations.</p> <p>Paragraph 4.8 alludes to a “range of support services” and the victim’s entitlement to support. However, no detail is given as to what these services might be. The guidance should list the services</p>	<p>victim decides not to cooperate with the authorities then there is automatically no right to remain. This is contrary to Article 14.1 of the Convention, which lists the victim’s personal situation as a reason to grant leave to remain, and to assurances given by the Department of Justice that support of victims was not contingent on cooperation with police.</p> <p>The chart indicates that access to legal advice is essential at the end stage where a person must either apply for residency using the regular immigration channels or return to their country of origin. However, we would submit that access to expert legal advice is essential much earlier on, if not for the entire process, to ensure that victims are being protected legally and are getting the support they need to get through the process.</p> <p>It is imperative that the flow chart sets out a very clear pathway for victims who</p>	<p>is made. A victim who is not willing to co-operate with law enforcement and who has no right to remain may apply for leave to remain in the UK via an immigration application.</p> <p>The provision of legal advice at an early stage is highlighted throughout the guidance, at paragraphs 1.7 and 3.4 for example. The chart is intended as an outline of the NRM process and not a detailed explanation of each stage in the process.</p> <p>The flow chart includes a pathway for those who choose not to co-operate with the police and notes that if they have no right to remain they may apply for provisions set out at paragraphs 7.16 to 7.19 apply whether or not the victim chooses to cooperate with law enforcement. However, WAFNI’s comments have been noted and will be taken into</p>		

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			<p>available to victims during the recovery and reflection period, and the means of accessing them explicitly outlined.</p>		<p>choose not to cooperate with police. The guidance in its current form does not provide this.</p>	<p>account when we revise the chart. We may decide to include a separate chart setting out the pathway for victims who choose not to co-operate with law enforcement.</p> <p>The 45 day reflection and recovery period may be extended.</p> <p>The NRM Form can only be submitted by a First Responder but there is no reason why a support organisation who has already built a relationship with the potential victim cannot provide input to the process.</p> <p>The support services are set out at Chapter 5 and are those provided by Migrant Help and Women’s Aid.</p>

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Organisation	Existing support arrangements (Paras 5.1 – 5.6) Did you find this helpful? If not how might it be improved?	The importance of access to independent legal advice (Paras 5.7 – 5.10) Did you find this helpful? If not how might it be improved?	The assessment and management of recovered victims (Paras 5.11 – 5.12) Did you find this helpful? If not how might it be improved?	Actions necessary if recovered victims go missing (Paras 5.13 – 5.14) Did you find this helpful? If not how might it be improved?	Way Forward
VSNi	VSNi fully supports the level of multi-agency engagement reflected in the guidance document. Specifically, in respect of compensation, we note that our organisation is not mentioned in the guidance document and would suggest that the service we provide in respect of Criminal Injuries Compensation should be highlighted.	We would however welcome greater detail in respect of the process of signposting to independent legal advice and advice on eligibility for compensation.			Reference to VSNi's role in assisting those seeking compensation through the criminal injuries compensation scheme has been added to section 8.  The guidance emphasises that it is essential to engage legal advice for victims at an early stage. Information on compensation may be included in the leaflet for victims that the Department of Justice will develop with Amnesty International.
Named Nurse Safeguarding WHSCT SHSCT	Clear and very useful.  Provides clear information on the sources of support for recovered victims.	Clear.  This is helpful and may answer queries at Q2 (ii). Perhaps introductory sections of the report could reference where the issue is clarified in later sections.  Given the importance of legal advice, we feel it is "essential" that the victim is accompanied by a Solicitor.	Clear.  Risk assessment/management plans should consider the impact of "dual process" on the trafficked person, i.e. concern about their future as well as possible anxieties around the pursuit of criminal charges against the trafficker.	Clear  This section is helpful.	Accepted. Cross references have been incorporated into the introductory sections of the guidance.  Paragraph 5.10 notes that the victim should "as a matter of good practice" be accompanied by a solicitor. A victim may, however, choose not to have a solicitor present.  Accepted. Paragraph 5.11 has been amended.

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<b>STEP</b>	<p>Under Article 12 of the Trafficking Convention, a referral to the health services is a right for all victims of trafficking. Therefore, it is not entirely accurate to suggest in paragraph 5.3 that:</p> <p><i>“During the period that suspected victims remain in Northern Ireland and receive support from Migrant Help/Women’s Aid, it is unlikely that a request will be made to access health and social care services unless the victim has a particular treatment or care need.”</i></p> <p>Where no healthcare referral has already been made, the Reasonable Grounds decision should be a trigger for a referral. The DHSSPS must work with the UKHTC and others to improve the response from health services to victims of trafficking. This will include equipping more health services and professionals with the training and skills to become first responders.</p>				<p>Accepted. Paragraph 5.3 has been amended.</p> <p>A training needs analysis for Health and Social Care Trust staff is being carried out and a training plan will be developed. PSNI has a training package in place. Joint training events are planned.</p>
<b>BHST</b>	<p>The Trust would recommend that greater clarity is provided between section 1.7 whereby it says most victims need access to GP services and may require other provision such as mental health or sexual health services but in 5.3 the guidance says that is unlikely that a request will be made to access health and social care services unless the victim has a particular treatment or need. This seems unclear and could be misconstrued. Does the Health and Social Care system not have a duty of care to vulnerable adults as they are defined in 1.6?</p> <p>Section 5.4 goes on to discuss non EEA nationals and immigration and EEA nationals who can return home, or to exercise their treaty rights but does not refer to those from A2 countries: namely Bulgaria or</p>				<p>Accepted. This has been clarified and paragraph 5.3 has been amended accordingly.</p> <p>DHSSPS is the process of developing guidance for the Social Care sector, which seeks to clarify the</p>

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	<p>Romania who face restrictions in accessing healthcare except for those treatments which are 'immediate and necessary', if they are not self-sufficient. This no recourse issue is mentioned in 7.2 whereby guidance says that each HSC Trust must take the decision as to the degree of social care support that it will provide on a discretionary basis. As indicated previously, this is potentially inconsistently applied across the region in the absence of specific guidance on this complex issue and in the somewhat grey area of where the threshold of human rights can be introduced and care provided.</p>				<p>law around access to social care by both EEA and non-EEA nationals. The position in relation to access to both health and social care is set out in paragraph 7.19.</p>
<b>Migrant Help</b>	<p>[Cross reference to Section 7 comments] Migrant Help support all male victims and in certain circumstances support female victims. Women's Aid support female victims. (Note: Migrant Help are currently in discussion with DoJ Community Safety Unit, to seek additional funding for 'outreach support' to victims of human trafficking who remain within Northern Ireland). To say it is unlikely that a victim will request or need health care or treatment is not true. Many victims need access to GP and dentists.</p>	<p>Yes</p>	<p>How do you practically manage a victims use of landlines? Victims have freedom of movement when being supported. Migrant Help's policy is to provide a victim with a mobile phone if they don't possess one. This allows contact with family and friends and helps give some control and agency back to the victim. We advise victims of the need to keep their location secure for their own personal safety. This is not something that Migrant Help can enforce.</p>	<p>Yes</p>	<p>References in the guidance to the support provided by Migrant Help have been amended. Accepted. Paragraph 5.3 has been amended. Accepted. Paragraph 5.12 has been amended accordingly.</p>
<b>LCNI</b>	<p>Para 5.3 A referral to health services is a right for all victims of trafficking (Art 12, Trafficking Convention).</p>	<p>Para 5.7. In first sentence, delete 'humanitarian protection' and replace with 'other immigration application'</p>			<p>Accepted. Paragraph 5.3 has been amended. Accepted. Paragraph 5.7</p>

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	<p>Therefore, this paragraph is ambiguous: <i>During the period that suspected victims remain in Northern Ireland and receive support from Migrant Help/Women's Aid, it is unlikely that a request will be made to access health and social care services unless the victim has a particular treatment or care need.</i> (Does this mean that the victim is unlikely to make a request or that Migrant Help/Women's Aid is unlikely to make a request?)</p> <p>Where no healthcare referral has already been made, the Reasonable Grounds decision should be a trigger for a referral. Note that as stands, this paragraph is inconsistent with paragraphs 7.8 – 7.10, which state that healthcare referrals should be made.</p> <p>There is need for clarity here as to which agency is responsible for ensuring that a healthcare referral is made and how this works in practice.</p> <p>Para 5.4. Current definition of Treaty Rights is inaccurate and too restrictive. We suggest the following:</p>	<p>Paras 5.7 – 5.10 It might be worth highlighting that some victims may have more than one solicitor acting in their case (for example, an immigration adviser, a criminal defence solicitor, family solicitor, civil solicitor, etc)</p> <p>See comments on 3.7</p>			<p>has been amended.</p> <p>Accepted. Paragraph 5.10 has been amended.</p> <p>This inconsistency has been corrected by the amendment to paragraph 5.3.</p> <p>Paragraph 5.3 specifically applies to Migrant Help and Women's Aid and confirms that they will help a victim to access health care, counselling or other therapeutic services.</p> <p>Safeguarding Vulnerable Adults and the Joint Protocol will guide the PSNI and HSC Trust's responses.</p> <p>The suggested definition of Treaty Rights requires further consideration. No</p>



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	<p>This refers to the Treaty of Rome 1957 (as amended by subsequent Treaties) which establishes the European Community and the Rights under that Treaty. These rights enable citizens of the European Union and European Economic Area to move and reside freely within the European Union, to work or to take up self-employment and not to be discriminated against on grounds of nationality. Rules allowing Bulgarian and Romanians to work are modified until 1 January 2014.</p> <p>After the first sentence it might be worth adding, 'This can be a critical time for Non-EEA nationals, who may become subject to immigration enforcement, and therefore specialist immigration advice is essential'.</p>				<p>change at this stage but an amendment, if necessary, will be incorporated into the guidance at the next revision.</p> <p>Accepted. Paragraph 5.4 amended.</p>
Adult Safeguarding Specialist WHSCT		<p>Para 5.9. Does this include the ABE interview that the migrant / women's aid worker will sit in with the victim? If so there needs to be clarity at the interface of both processes. Also section 5.10 refers to a solicitor being present? There may also be an interpreter – this within an ABE interview is a significant number of individuals. There needs to be clarity in the role of the ABE social worker and the women's aid support worker.</p>	<p>Para 5.11 – 5.12 In regard to assessment it may be useful to have a template risk assessment specific to human trafficking issues which could be used by practitioners.</p>		<p>Both of these issues require further consideration.</p>
NIPSA	<p>One of the criticisms coming out of The Anti-Trafficking Monitoring Group report was the limited access and professionalism of interpreting services</p>				<p>PSNI and HSC Trusts have contracts and procedures in place for</p>

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<p><b>WAFNI</b></p>	<p>available in Northern Ireland which forces certain practitioners to rely on interpreters working over the telephone or others whose independence and links with the community speaking their language are not sufficiently clear to be sure that they are not influenced by traffickers. It is important that this under-provision is addressed as a matter of urgency and the guidance sets out specifically what professional interpreting services are available and their contact details. NIPSA would also suggest that this service is identified separately in Section 8 on available support and information services.</p> <p>For the purposes of clarity, we would point out that it is Women's Aid Federation Northern Ireland that has the contract for supporting female victims of human trafficking. We suggest that our full correct title should be used throughout this guidance, including at paragraph 5.1, to avoid confusion with our local groups and to ensure that other practitioners know which organisation to contact regarding trafficking-related issues.</p> <p>Under Article 12.6 of the Convention</p> <p>"Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness."</p> <p>Thus, the UK and Northern Ireland authorities have an obligation to support a victim, irrespective of whether they co-operate with any police investigation relating to their trafficking. Support should not be withdrawn on account of refusal to cooperate or contingent on cooperation. When Women's Aid met with the Department of Justice to</p>	<p>Provision of accurate, expert legal advice on the wide range of issues affecting victims of trafficking is essential to them receiving the support they are entitled to. Appropriate legal representation is even more essential for non-EEA victims, who also require specialist immigration advice as promptly as possible. Victims have a right to legal advice and information immediately after they disclose that they have been trafficked (Palermo Protocol, art 15.1). Therefore this guidance should advise that victims are facilitated to get advice and information on their rights and the process they are about to undertake at the earliest opportunity. This should be reflected not only in the written guidance, but in the accompanying flow chart on page 15.</p> <p>However we recognise that obtaining</p>			<p>staff to access interpreting and translation services when required. These contracts do not extend to voluntary sector organisations who should have their own arrangements in place.</p> <p>Accepted. "Women's Aid" has been amended to "Women's Aid Federation Northern Ireland" throughout the guidance.</p> <p>The Department of Justice package of support is available to potential victims during the reflection and recovery period. Guidance. This is specified at paragraph 5.1.</p> <p>The need to engage legal advice for recovered victims is highlighted at paragraphs 1.7 and 3.4.</p>

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	<p>discuss trafficking related issues, we were given assurance that support is not contingent on co-operation in Northern Ireland – this should be expressly stated in the guidance.</p> <p>Under Article 14 of the Convention, States must also issue renewable residence permits to victim in 2 situations: when their stay is necessary to facilitate co-operation in an investigation or criminal proceedings, or when their stay is necessary owing to their personal situation. The draft guidance must therefore plainly state that the granting of a residence permit is not contingent on the willingness of the victim to co-operate, but should be granted to victims who do not wish to co-operate if their personal circumstances necessitate it. This should be accompanied by a clear pathway for applying for, and being granted, leave to remain.</p>	<p>expert legal advice can be difficult in this jurisdiction, because of the lack of experience of most solicitors in dealing with trafficking. In our experience, solicitors with no experience in dealing with trafficking issues have given unhelpful advice to clients. This may be further complicated by the fact that a victim might have several solicitors for different aspects of their case – one for criminal allegations, one for immigration issues, and one for the trafficking itself. Training should be a requirement for solicitors if they are to deal with trafficking cases, and this should be stipulated in section 5 of the draft guidance. The training should reflect best practice both from experts in Northern Ireland like the Law Centre, and from GB-based organisations like the Poppy Project.</p> <p>When outlining the clear path to obtaining support for victims of trafficking in sections 5 and 7, this guidance must make it explicit who exactly can support and have access to these very vulnerable victims. Untrained volunteers, though well meaning, can potentially do more harm than good for victims, due to their lack of training or expertise. Harm can include failure to follow best practice when assisting the victim, acting in a manner that compromises their safety and</p>			<p>Accepted. Paragraph 4.8 has been amended to clarify that a Residence Permit may be issued in recognition of personal circumstances.</p> <p>Concerns about untrained volunteers and the potential harm they may cause is noted. The DOJ will consider how to promulgate this message as it continues to raise awareness and engage with the NGO sector. The guidance specifically outlines the DOJ funded for support provided by Migrant Help and Women's</p>

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	<p>At paragraph 5.3, the guidance claims that “it is unlikely that a request will be made to access health care and social care services unless the victim has a particular treatment or care need”. In our experience, this could not be further from the truth. Female victims of trafficking have diverse and urgent health care needs, and this must be reflected and provided for in the guidance. The statement in paragraph 5.3 also contravenes the statement in 1.7 in this guidance, which states correctly that “most victims need access to GP services and may require other provision such as mental health or sexual health services as well as, potentially, rehabilitative help in the longer term to integrate into the community.” We therefore request that the contentious and erroneous statement in paragraph 5.3 is removed from the guidance.</p> <p>A full support package must be available to victims of trafficking, and it must be spelled out in the guidance what victims are entitled to and how they can access it. There must be a clear pathway to accessing healthcare, with specific people in the health service identified as go-to people who have received proper training and understand the nature of trafficking.</p>	<p>wellbeing, and acting in a manner that is culturally insensitive or inconsistent with a victim’s religious convictions and practices. Victims are frequently distrustful and in desperate need of stability, so it is important not to expose them to too many different people as part of their recovery. It is also the case in our experience that women and men often have distinct and differing needs, and this must be understood by support workers.</p> <p>Based on our years of experience of working with women who have been victims of violence, we would suggest that one keyworker is assigned to each victim, who then acts as a gatekeeper to that victim. This keyworker should be adequately trained and from a designated support organisation. Anyone gaining access to support victims directly must be an experienced, trained support worker. There is a role for community groups to assist victims of human trafficking, for example in a fundraising capacity. However it is entirely inappropriate to allow untrained people access to a victim of trafficking in a key supporting role.</p> <p>Regarding the role of Women’s Aid in paragraph 5.9, it should be noted that while we strongly support the requirement that the victim is accompanied by their Women’s Aid</p>			<p>Aid.</p> <p>Accepted. Paragraph 5.3 has been amended.</p> <p>No change. A list of HSC designated officers is included at Appendix 5.</p> <p>No change to the guidance, but current practice will be clarified with UKBA.</p>

SECTION FIVE

Organisation	Existing support arrangements (Paras 5.1 – 5.6) Did you find this helpful? If not how might it be improved?	The importance of access to independent legal advice (Paras 5.7 – 5.10) Did you find this helpful? If not how might it be improved?	The assessment and management of recovered victims (Paras 5.11 – 5.12) Did you find this helpful? If not how might it be improved?	Actions necessary if recovered victims go missing (Paras 5.13 – 5.14) Did you find this helpful? If not how might it be improved?	Way Forward
		<p>keyworker during interviews with the UKBA, this is currently not the case in reality. In our experience, it is down to the individual UKBA interviewer whether Women's Aid workers are allowed to accompany recovered victims to their interview with the UKBA. We fully support any changes that make it standard practice for keyworkers to accompany victims to interviews, as it would keep keyworkers informed of their client's case and allow them to provide support more comprehensively. If this is to be the case, however, it must be established unambiguously that keyworkers have the right to accompany victims in interviews, not just in writing in this guidance but in practice.</p>			

SECTION SIX – ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)

Organisation	Contact and liaison arrangements with the HSC Trusts (Paras 6.1 – 6.4) Did you find this helpful? If not how might it be improved?	The interface with Adult Protection procedures (Paras 6.5 – 6.7) Did you find this helpful? If not how might it be improved?	Medical and forensic procedures and matters relating to consent (Paras 6.8 – 6.12) Did you find this helpful? If not how might it be improved?	Completion of the NRM Report Form (Paras 6.13 – 6.14) Did you find this helpful? If not how might it be improved?	Recovered victims who go missing (Para 6.15) Did you find this helpful? If not how might it be improved?	PSNI inquiries and criminal investigations (Paras 6.16 – 6.17) Did you find this helpful? If not how might it be improved?	Way Forward
<b>VSNI</b>	We felt that this section was very comprehensive. However, we would suggest that some detail in respect of those individuals identified as having been the victim of human trafficking, subsequent to another criminal investigation, for example through an arrest for prostitution or a drugs offence, would be useful. Helpful						Accepted. Paragraph 6.1 amended.
<b>Named Nurse Safeguarding WHSCT</b>	Helpful	Helpful	Helpful – would suggest reference to SARC here	Helpful	Helpful	Helpful	Accepted. Paragraph 6.5 has been amended to incorporate reference to the SARC facility.
<b>SHSCT</b>	This section requires further clarity. The decision to invoke adult safeguarding/Joint Protocol Procedures rests with the PSNI. It is unclear what criteria will be used to assist police officers in reaching this decision. How will officers decide to advance if Trust involvement would be of assistance (notice to be given to Trusts 40 hours before operation commences). In the absence of guidance to PSNI staff planning the operation Trusts are likely to be alerted in all cases or not at			This section is helpful	This section is helpful	This section is helpful	No change at this stage. Paragraphs 6.2 and 6.3 outline the contact and liaison arrangements. The details are contained in the Safeguarding Vulnerable Adults process and Joint Protocol.

SECTION SIX – ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)

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	all. What resource impact if any will this have on the new OOHs proposals?	Consideration should be given to the need to review JP/ABE training to ensure it takes account of developments within human trafficking.	It might be useful to reference the new SARC service here. The issue of ascertaining capacity to consent may be complicated by the impact of language, cultural and trauma issues. Yes	Yes	Yes		Resource implications are not a matter for this guidance.  Not for this guidance. However the comment will be identified to HSCB.  Accepted. Reference to SARC has been incorporated into paragraph 6.5
<b>Migrant Help</b>	Where does Migrant help fit into this procedure? Migrant Help currently provide support to Police Operations when requested by PSNI, aimed at supporting rescued victims of human trafficking. Migrant Help have a comprehensive system in	(6.5) The issue of 'repatriation of victims' needs to be factored into the appropriate response! PSNI have recently been requesting Migrant Help to repatriate rescued	Yes	Yes	Yes		Accepted. Paragraphs 6.2 and 6.3 have been amended.  Repatriation issues require further discussion.

SECTION SIX – ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)

Organisation	Contact and liaison arrangements with the HSC Trusts (Paras 6.1 – 6.4)	The interface with Adult Protection procedures (Paras 6.5 – 6.7)	Medical and forensic procedures and matters relating to consent (Paras 6.8 – 6.12)	Completion of the NRM Report Form (Paras 6.13 – 6.14)	Recovered victims who go missing (Para 6.15)	PSNI inquiries and criminal investigations (Paras 6.16 – 6.17)	Way Forward
	<p>place to assess victims needs and develop an individual tailed support plan. Migrant Help may partner with the British Red Cross with whom they have an MOU to provide this support to potential victims. The support may consist of providing a screening service to identify potential victims of human trafficking and providing immediate accommodation. (Migrant Help are currently in discussion with DoJ, Community Safety Unit to seek additional funding for support to field operations).</p> <p>6.2 If support is required in a safe place outside of Northern Ireland MH work with PSNI to facilitate based on existing protocol.</p>	<p>Eastern European females within 48/72 hours. In these circumstances female victims are mostly supported by Migrant Help. Victims rescued in these circumstances may either be supported by Migrant Help or Women's Aid. The PSNI advise Migrant Help on the risk assessed measures that will determine how best to support the victim. MH are the central referral point and gateway for all adult victims of trafficking, based on the risks and other relevant factors MH and PSNI may choose not to refer onto Womens aid.</p> <p>Migrant Help should be provided with the opportunity to meet with any potential victim identified to explain the services available as a victim.</p>	<p>Did you find this helpful? If not how might it be improved?</p>	<p>Did you find this helpful? If not how might it be improved?</p>	<p>Did you find this helpful? If not how might it be improved?</p>	<p>Did you find this helpful? If not how might it be improved?</p>	<p>Noted.</p> <p>When a victim exits the recovery and reflection period (expected to be 45 days) which under the current DoJ contract means that Migrant Help/Women's Aid are no longer funded/contracted to support the victims an anomaly occurs. The close liaison and more specifically the exchange of information between police and Migrant Help/Women's Aid may no longer be lawful due to disclosure constraints placed upon the police or other statutory agencies such as the UK Border Agency.</p>



SECTION SIX – ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)

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<b>LCNI</b>	Para 6.1 It might be worth adding that victims of trafficking sometimes become the <i>subject</i> of criminal charges.  (The existence of the Trafficking Convention's 'non-prosecution of victims' provision is not always a bar to prosecution).	Para 6.7 Refer to 'interpreting and translation services'.			Para 6.15. Repetition of 5.13	Accepted. Paragraph 6.1 has been amended.  Accepted. Paragraph 6.7 has been amended.  Accepted. Paragraph 5.13 has been removed.	
<b>Adult Safeguarding Specialist WHSCT</b>	Para 6.2 If a victim of potential human trafficking is contained within the current working definition in the regional policy and JP then why would PSNI be considering whether or not it would be necessary to evoke these policy and procedures. I think this question is key throughout the document and impacts on the understanding of the interface between the processes. If the case is not to be considered Joint protocol then there needs to be explanation as to what threshold or criteria are applied.	Para 6.5 – 6.7. The requirement on occasion to assist PSNI with recovery of victims will require training for current adult protection staff and OHS.					Noted. This will be referred to HSCB and PSNI for consideration.  A training needs analysis for Health and Social Care Trust staff is being carried out and a training plan will be developed. PSNI has a training package in place. Joint training events are planned.
<b>WAFNI</b>	The guidance is unclear as to the relationship between PSNI and other supporting groups throughout this section. In paragraph 6.3, The PSNI / HSC	The current established procedure when a victim of human trafficking is identified, as laid out in paragraph 6.5 of the				It is also worth noting the complexity of trafficking situation in this section, particularly where law enforcement attend a police	Not accepted. Paragraph 6.2 notes that PSNI may ask Migrant Hep to attend a police

SECTION SIX – ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)

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	Trust link is not explained in detail, and does not account for the important step of notifying Migrant Help's Helpline as the first port of call to provide support to the victim, who then refer female victims to Women's Aid's 24 Hour Domestic Violence Helpline, or Migrant Help's services for male victims. In our understanding of the current process, it is at this stage that the HSC Trusts should become involved, once Women's Aid or Migrant Help have established the victim's health care needs.	guidance, is as follows: the PSNI contact Migrant Help via their Helpline to arrange support for the victim, who then refer female victims to Women's Aid's 24 Hour Domestic Violence Helpline, and male victims to Migrant Help's services. A care package is put together by these service providers. At this stage, Women's Aid would contact the relevant HSC Trusts to cater for any caring needs that the victim may have.				organisations are concerned. Victims of human trafficking may have committed any number of criminal offences in the course of their trafficking, due to the nature of trafficking itself. It is essential that the guidance points out here that in spite of this, they are primarily victims and should be treated as such.	operation. Paragraph 6.5 notes that PSNI will arrange for transfer of the potential victim to Migrant Help or Women's Aid when it is safe and appropriate to do so. Paragraph 5.3 confirms that Migrant Help/Women's Aid help victims access health care and states that there should be early liaison between them and the HSC Trust where there are likely to be ongoing support needs.  Noted. The Rainbow Project has been included in Section 8. Contact details for other organisations will be
					It would also be useful to include in section 6 an additional support strand for LGBT victims. The Rainbow Project and other relevant LGBT organisations could be		

SECTION SIX – ROLE OF THE POLICE SERVICE OF NORTHERN IRELAND (PSNI)

<p>Organisation</p>	<p>Contact and liaison arrangements with the HSC Trusts (Paras 6.1 – 6.4)</p> <p>Did you find this helpful? If not how might it be improved?</p>	<p>The interface with Adult Protection procedures (Paras 6.5 – 6.7)</p> <p>Did you find this helpful? If not how might it be improved?</p>	<p>Medical and forensic procedures and matters relating to consent (Paras 6.8 – 6.12)</p> <p>Did you find this helpful? If not how might it be improved?</p>	<p>Completion of the NRM Report Form (Paras 6.13 – 6.14)</p> <p>Did you find this helpful? If not how might it be improved?</p>	<p>Recovered victims who go missing (Para 6.15)</p> <p>Did you find this helpful? If not how might it be improved?</p>	<p>PSNI inquiries and criminal investigations (Paras 6.16 – 6.17)</p> <p>Did you find this helpful? If not how might it be improved?</p>	<p>Way Forward</p>
			<p>Women's Aid has serious concerns that the pathway for victims to obtain support in this draft guidance is unclear and erroneous in several places. The guidance directs practitioners to paragraphs 6.8 – 6.12 to deal with victims' healthcare needs. However these sections do not in fact address the health care needs of victims. The named sections actually outline the procedure for conducting medical examinations with a view to gathering forensic and DNA evidence. This is an entirely separate matter from the health care needs of victims.</p>		<p>named as support organisations in the guidance at this point.</p>		<p>included in the leaflet for victims that the Department of Justice will develop later this year.</p> <p>Accepted and corrected.</p>

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

Organisation	Contact and liaison arrangements with the PSNI (Paras 7.1 – 7.6) Did you find this helpful? If not how might it be improved?	Support for recovered victims (Para 7.7) Did you find this helpful? If not how might it be improved?	Healthcare needs of recovered victims (Paras 7.8 – 7.10) Did you find this helpful? If not how might it be improved?	Age disputed individuals (Paras 7.11 – 7.14) Did you find this helpful? If not how might it be improved?	Families with children who have been trafficked (Para 7.15) Did you find this helpful? If not how might it be improved?	Persons confirmed as victims of trafficking (Paras 7.16 – 7.19) Did you find this helpful? If not how might it be improved?	Way Forward
VSNI	VSNI felt that the arrangements outlined in section 7 were also clear and concise and would make no further suggestions for improvement at this stage. Very helpful						
Named Nurse Safeguarding WHSCT SHSCT	Again the point is made that current adult safeguarding training, including corporate induction, will need to be adapted to include the indicators of human trafficking. Consent issues require further exploration.	Trusts will need to revisit their existing arrangement under Pentameter 2 for accessing trafficked individuals to health and social care services to ensure they take account of the new arrangements.	Clear and helpful	Helpful	Clear	Helpful	
STEP	Paragraph 7.2 states that “...many adult victims will have no recourse to public funds.” This is incorrect. While a potential victim’s claim is pending, the No Recourse to Public Funds element is irrelevant. The Trafficking Convention requires that appropriate care is afforded to all victims. Victims are not distinguished based on their immigration status. Only if a person is NOT deemed to be a victim of trafficking, should their immigration status be considered.		See previous	This section is helpful	This section is helpful	Trusts will need to address how the needs of trafficked individuals will be accommodated given existing POC structures.	Noted. This will be referred to HSCB for consideration.
				Paragraph 7.13, where there is a dispute as to the individual’s age, both Article 10(3) of the Trafficking Convention and Preamble 22 of Directive 2011/36/EU require the victim to be given the benefit of the doubt and accorded special protection measures. Article 10(3) of the Trafficking Convention states: <i>“When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a</i>			Accepted. Paragraph 7.2 has been amended. Paragraph 7.12 states that in such cases the person must be treated as a child until information to the contrary becomes available.

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

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BHSCT	The Trust would recommend that greater clarity is provided between section 1.7 whereby it says most victims need access to GP services and may require other provision such as mental health or sexual health services but in 5.3 the guidance says that is unlikely that a request will be made to			child and shall be accorded special protection measures pending verification of his/her age.” Preamble 22 of Directive 2011/36/EU further states: “Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection.” Providing the necessary support and protections for trafficking victims is a shared responsibility. It requires continued coordination and collaboration across the UK. The DHSSPS plays a vital role in ensuring that victims are properly cared for and serves as an essential route into the NRM.			DHSS is a First Responder and therefore provides a route into the NRM.
							Accepted. An amendment to paragraph 5.3 has clarified the position.

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

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	<p>access health and social care services unless the victim has a particular treatment or need. This seems unclear and could be misconstrued. Does the Health and Social Care system not have a duty of care to vulnerable adults as they are defined in 1.6? Section 5.4 goes on to discuss non EEA nationals and immigration and EEA nationals who can return home, or to exercise their treaty rights but does not refer to those from A2 countries: namely Bulgaria or Romania who face restrictions in accessing healthcare except for those treatments which are 'immediate and necessary', if they are not self-sufficient. This no recourse issue is mentioned in 7.2 whereby guidance says that each HSC Trust must take the decision as to the degree of social care support that it will provide on a discretionary basis. As indicated previously, this is potentially inconsistently applied across the region in the absence of specific guidance on this complex issue and in the somewhat grey area of where the threshold of human rights can be introduced and care provided.</p> <p>[Cross reference to comments in</p>						<p>DHSSPS is the process of developing guidance for the Social Care sector, which seeks to clarify the law around access to social care by both EEA and non-EEA nationals. The position in relation to access to both health and social care is set out in paragraph 7.19.</p>

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

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	Section 5]		Para 7.9 it may be useful to list the Northern Ireland New Entrants Service which is a regional service managed by Belfast HSC Trust and funded by the Public Health Agency. This is a nurse led service seeking to provide health care for new entrants to Northern Ireland to include new immigrants, refugees, asylum seekers and clients who are not able to register with a GP. The service offers screening and immunisations as required.				Clarification of the New Entrants Service is being sought.
NICCY	Paras 7.11 to 7.14	NICCY recommends that the Department of Justice (DOJ) and DHSSPS ensure that the section of the draft guidance for consultation on "age disputed individuals" reflects current best practice standards with respect to children and young people under the age of 18.					Noted. Paragraph 7.11 – 7.14 reflect best practice.

<sup>14</sup> Heaven Crawley (March 2012) "Working with Children and young people subject to immigration control: Guidelines for best practice. Second edition (London: ILPA)

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

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	<p>In March of this year, the Immigration Law Practitioners' Association (ILPA) published a second edition of "Guidelines for best practice" in working with children and young people subject to immigration control by Heaven Crawley.<sup>15</sup> These guidelines aims to "represent best practice in the context of the United Kingdom immigration control based on contemporary knowledge and relevant national, international and regional norms, standards and principles"<sup>15</sup> and can be accessed via the following web link: <a href="http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa_child_guidelines_2nd_ed.pdf">http://www.ilpa.org.uk/data/resources/14627/12.04.25-ilpa_child_guidelines_2nd_ed.pdf</a><sup>16</sup></p> <p>We would highlight the statements made at paragraph 7.11. of the draft adult trafficking guidance. We note that an example is given at the end of the paragraph as a rationale to why a person over 18 would be told to claim that they are under 18. However no such example is given to practitioners as a rationale as to why a young person under the age of 18 may have been told to state that he/she is an adult. Some direction is provided in Crawley's Guidelines for best practice on working with children and young people subject to immigration control:</p> <p><i>"Professionals who first come into contact with a child or young person who may have been trafficked may have doubts about the child's age and/or identity. This because</i></p>						<p>A link to ILPA should be incorporated into the Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking, issued by DHSSPS and PSNI in February 2011</p> <p>Accepted but no change at present until further clarification has</p>

<sup>15</sup> As above, page 1  
<sup>16</sup> Last accessed 16 August 2012  
<sup>17</sup> Children's Commissioner for England (July 2012) "Review of case law and local authority practice since the Supreme Court judgement in R(A) v Croydon LBC [2009]" (London:OCC), page 20. In March 2012 the UK Children's Commissioners jointly voiced serious concerns about the UK Border Agency's plans to pilot a trial with the London Borough of Croydon to offer 'the opportunity to young people who claimed to be children but who had been assessed by Croydon Social Services as over 18 to undergo a dental age assessment <http://hncev.org/article.aspx?mainid=14024> (last accessed 29 August 2012). The pilot was suspended in April while the Border Agency seeks ethical approval for the scheme.  
<sup>18</sup> DHSSPS/PSNI (February 2011) "Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking" (Belfast:DHSSPS/PSNI) page 15.  
<sup>19</sup> UK Children's Commissioners (November 2011) "UK Children's Commissioners' Midterm Report to the UK State Party on the UN Convention on the Rights of the Child. The Evidence" (London/Belfast/Edinburgh/Swansea/Conwy: UK Children's Commissioners).  
<sup>20</sup> See footnote 1 above, Crawley (2012), at paragraph 9.28.  
<sup>21</sup> See footnote 7 above, UK Children's Commissioners (November 2011)



SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

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	<p><i>children and young people who are trafficked rarely enter on their own passports and traffickers tend to provide them with identity documents which state that they are older than they are to avoid the extra exit and entry requirements imposed on children</i>.</p> <p>Following the rationale outlined Crawley's best practice guidelines above, we recommend that an explanation is added to paragraph 7.11 of the draft DOJ/DHSSPS guidance highlighting an example as to why an under 18 may state that he/she is an adult. This would draw further attention to the risk of under 18s going undetected as such. By the same, token it is important that such an example is highlighted in the draft guidance in order to provide a sense of balance to the relevant section, given that an example is already highlighted within the draft guidance illustrating a rationale for the opposing example of an over 18 claiming to be under the age of 18.</p>	<p>Paragraph 7.13. it is noted that Health and Social Care (HSC) Trusts "<u>should</u> have access to social workers who have been trained in conducting Merton-compliant age assessment of young people" (emphasis added).</p> <p>Paragraph 7.13. "age assessments should be undertaken by two social workers, one of whom must be Merton trained...." (We note that this is largely copied across from the child trafficking guidance).</p>	<p>The Children's Commissioner for England explained in a recently published report that "<i>since the introduction of the section 55 duty [within the Borders, Citizenship and Immigration Act 2009], UK Border Agency policy has been to accept the conclusion of a Local Authority assessment of Age (if it is available to the immigration officer and if it is accepted that it was concluded in accordance with the relevant case law)</i>"<sup>17</sup></p> <p>It is therefore essential that social workers in Northern Ireland are adequately trained for the task of conducting age assessments. In order to comment on the relevant area of the guidance for consultation it is crucial to have an awareness of the number of social workers who have received the relevant training, in each Trust, as appropriate. According to the corresponding section of the child trafficking guidance issued in February 2011, "<i>Merton Compliant Age Assessment training for Trust' social workers</i>" was "<i>due to commence in February 2011</i>".<sup>18</sup></p>	<p>Within the context of our response to the present consultation, we therefore request figures on:</p> <ul style="list-style-type: none"> <li>• The number of social workers (including the number within each Trust, as appropriate) who have received training on conducting Merton-compliant age assessments of young people since February 2011, to date; and</li> <li>• The number of social workers within the Trusts (including the number trained within each Trust, as appropriate) who had received such training as of February 2011.</li> </ul> <p>We note that the requested information may be held by DHSSPS (or the HSC Board/Trusts as appropriate), and not the DOJ, which we understand to be leading on the administration of the consultation exercise. We also note that the draft guidance has been developed jointly by DOJ and DHSSPS, and look forward to receiving a response on this matter.</p>	<p>DHSSPS will take forward the information request.</p>		

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	<p>On the issue of allocating responsibility for the assessment of age, we note the following advice within the draft guidance at paragraph 7.13. <i>“Age assessment should not be undertaken by two social workers, one of whom must be Merton trained and the other, preferably, the young person’s social worker or a social worker who is familiar with the case.”</i></p> <p>In our November 2011 “Midterm Report to the UK State Party on the UN Convention on the Rights of the Child<sup>19</sup>”, while noting that it is preferable that child care professionals make the assessment on age, the UK Children’s Commissioners made the following comment on the number of challenges that this presents:</p> <p><i>“The UK Children’s Commissioners have held a consistent position that there is a potential conflict of interest where a local authority has the dual role of making the decision on the age of the young person and then accommodating them if found to be a child. The potential conflict is exacerbated by the insufficient ‘per capita’ grant that UKBA provides for the care of each person found to be a child and the subsequent financial consequence for the authority. Because a majority of age dispute young people will first come to the attention of UKBA in a ‘gateway’ authority there is a disproportionate impact on those particular Local Authority budgets and therefore a greater incentive to reduce their costs by finding the young person either not to be child or to older than the young person is claiming (as it is more expensive to accommodate a young below the age of 16). The Children’s Commissioner have therefore taken the position that there should be greater involvement in the age determination process by other professional who are in contact with the young person. Of particular importance is establishing the view of a paediatrician before coming to a final decision.”</i></p> <p>Our comments are complemented by Crawley’s advice in the Guidelines for best practice on working with children and young people subject to immigration control: <i>“Age assessment should be undertaken by professionals who are independent and have no vested interest in the outcome of the decision.”</i><sup>20</sup>.</p> <p>The UK Children’s Commissioner have commented that evidence exists from around the UK that authorities do not consistently give the “benefit of the doubt” to a young person claiming to be a child<sup>21</sup>. Where a child is incorrectly assessed to be an adult or as older than they actually are, this has profound effects on the child’s enjoyment of their rights under the UNCRC.</p> <p>We urge the DOJ/DHSSPS to take into account the advice provided in this submission and to ensure that the final guidance reflects best practice standards.</p>						
<b>Migrant Help</b>	Yes	Yes	Yes	Yes	Yes	Yes	
<b>LCNI</b>	Para 7.2 While a person’s trafficking claim is pending, the No Recourse to Public Funds is irrelevant. The Convention requires that appropriate care is afforded to all victims; it does not differentiate victims on the basis of their immigration status. This						Accepted. Paragraph 7.2 has been amended. The amendment addresses the issues raised by LCNI on

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	<p>section of guidance is therefore incorrect as it stands.</p> <p>Also note that this piece of guidance is inconsistent with 7.7, which correctly (in our view) states that 'on the basis of assessed needs, the DHTO should seek to facilitate access across the full range of health and social care services'</p> <p>Only if, at the outcome of the NRW, the individual is not deemed to be a victim of trafficking, should the person's immigration status be a consideration.</p> <p>Para 7.5 See above comments on 'First Responders'.</p> <p>We would strongly urge Trust staff to use the Department's First Responder status to make a referral into the National Referral Mechanism directly. The victim must consent to this.</p> <p>This completed, the Trust staff should seek the victim's consent to make a referral to PSNI and to other services such as legal advice.</p> <p>See comments on para. 3 – 3.18</p>		<p>Paras 7.8 - 7.10 These paragraphs contradict para. 5.3.</p>	<p>Para 7.13. Where there is a dispute as to the individual's age, both the Convention and the Directive require that s/he <u>must</u> be given the benefit of the doubt and must be accorded special protection measures (Convention Art 10(3), Directive Preamble 22).</p> <p>Therefore, while the age assessment process described at 7.13 is underway (which can be a fairly lengthy procedure at times), the individual <u>must</u> be treated as a child.</p> <p>Ideally, both Social Workers who are undertaking the age assessment should be Merton trained.</p>			<p>paragraph 7.7.</p> <p>Amendment of paragraph 5.3 has removed the contradiction with paragraphs 7.8 – 7.10.</p> <p>Paragraphs 7.11 to 7.14 sets out the procedures to be followed in cases of age disputed individuals.</p> <p>Noted but no change considered necessary.</p> <p>Paragraphs 7.16 to 7.19 outline entitlement to health and social care for confirmed victims of trafficking.</p>

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						<p>The guidance should provide more information as to this assessment process. In particular, what bearing does 'vulnerable adult' status have at this stage?</p> <p>In addition, it would be helpful to add a couple of additional paragraphs on the following topics.</p> <p>Each paragraph should clearly outline the role of Trust staff in each</p>	<p>DHSSPS is a designated First Responder. A list of First Responders is available on the SOCA web site. A link to the SOCA website has been included in the guidance.</p> <p>Noted. Paragraph 7.19 has been amended.</p> <p>Needs further consideration.</p>

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						<p>instance: - Ongoing legal processes can be lengthy, complex (may involve different courts for different matters) and arduous for the victim (e.g. having to give evidence against the trafficker). The victim may need continued support throughout. Note that the Directive states that assistance and support should be available to [victims] before, during and for an appropriate time after criminal proceedings' (Preamble 18).</p> <p>- With reference to Chapter 8, it might be appropriate to refer the individual to support services such as: a) Language</p>	<p>Noted. These will be incorporated into the leaflet for victims that the Department of Justice will develop with Amnesty International later this year.</p>

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						<p>classes</p> <p>b) Employment advice/ vocational training / support integration, social support services</p> <p>c)</p> <p>-</p> <p>Finally, it might be useful to remind all practitioners that, even once a person has completed the NRM trafficking process, their confidentiality and privacy should still be respected. Consent must be obtained for all referrals to support organisations.</p>	<p>Accepted. The introduction to Chapter 8 has been amended.</p> <p>Accepted. Paragraph 7.16 has been amended.</p> <p>Accepted, and added.</p> <p>The suggested</p>
						<p>Para 7.16. Delete 'and whether assisted voluntary return home is possible'.</p> <p>Add this to final sentence, 'in the form of a one year renewable</p>	

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						<p>Residence Permit. Para 7.17. Treaty Rights definition. See our comment on para. 5.4 We propose: <i>This refers to the Treaty of Rome 1957 (as amended by subsequent Treaties) which establishes the European Community and the Rights under that Treaty. These rights enable citizens of the European Union and European Economic Area to move and reside freely within the European Union, to work or to take up self-employment and not to be discriminated against on grounds of nationality. Rules allowing Bulgarian and Romanians to work are modified until 1 January</i></p>	<p>definition of Treaty Rights requires further consideration. No change at this stage but an amendment, if necessary, will be incorporated into the guidance at the next revision.</p>

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						2014. Para 7.18 Insert, 'or other immigration status' after 'discretionary leave to remain'	
<b>Adult Safeguarding Specialist WHSCT</b>	The requirement on occasion to assist PSNI with recovery of victims will require training for current adult protection staff and OHS.						A training needs analysis for Health and Social Care Trust staff is being carried out and a training plan will be developed.
<b>WAFNI</b>	The duty of State Parties to the Convention to provide care for victims of trafficking is established in Article 12, and includes legislative or other measures to assist victims in their physical, psychological and social recovery. This onus to provide care is not sufficiently reflected in this guidance, and at times the guidance actively contravenes this provision. For example, at paragraph 7.2 it states that HSC Trusts should take the decision on the degree of care that it will provide "on a discretionary basis", and mentions that some victims have no recourse to public funds.						Paragraph 7.2 has been amended to note that having no recourse to public funds does not mean they should not receive health and social care.



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	<p>In our view, it is completely unacceptable that the guidance states that the HSC Trusts can make decisions about providing care “on a discretionary basis”: It violates basic human rights obligations and obligations under the Convention to provide care, and the fact that a victim has no recourse to public funds is entirely irrelevant. Even if victims are non-EEA, their care and support should not be awarded contingent on their immigration status at the discretion of the Trusts. It is their status as a victim in need, and their right to care and protection under the Convention, that must be decisive in whether they are eligible for care and support. We therefore strongly urge that the wording in this paragraph is amended to reflect the obligations of the State and the Trusts to victims of human trafficking.</p> <p>We note that the guidance suggests that “all recovered victims should be offered screening for Hepatitis B, Hepatitis C and HIV infection and where appropriate, should be encouraged to avail of sexual health screening”, due to the nature of the crimes perpetrated</p>						<p>Accepted. Paragraph 5.3 has been amended.</p>

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	<p>against them. Women's Aid fully agrees that this is necessary as a basic minimum, but we would question how this reasoning sits with the assertion in 5.3 that "it is unlikely that a request will be made to access health and social care services unless the victim has a particular treatment or care need". We suggest that paragraph 5.3 be revised to recognise the needs of victims and ensure consistency within the guidance.</p>						

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	<p>There is confusion within the guidance over the exact role and duties of the HSC Trusts and the support providers Migrant Help and Women's Aid. At paragraph 1.7, it states that the PSNI are to engage with the relevant HSC Trust to agree the level of joint working with social services from the point that the victim is identified. This is reiterated in paragraph 7.4. The guidance here does not, however, mention the role of Migrant Help or Women's Aid at the initial identification stage. This omission is highly problematic, as the care of rescued victims is supposed to be instigated immediately by the designated service providers – this would be Women's Aid for female victims and Migrant Help for male victims. Therefore it is extremely concerning that this part of the process has been left out from this section of the document.</p>						<p>Paragraph 1.7 notes that there should be early liaison between Migrant Help/Women's Aid and the relevant HSC Trust to determine how the victim's ongoing supports needs can be met. This is reiterated at paragraph 5.5. Paragraphs 7.8 to 7.10 also note the role that Migrant Help/Women's Aid have in addressing the healthcare needs of recovered victims.</p>

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			<p>A clear pathway is especially important as, in our experience, it is very difficult to access health care for trafficking victims in practice. For example, it is very difficult to register a victim of trafficking with a GP, on account of their immigration status (see para 7.8). Though some GPs will agree to take on a trafficking victim due to their good relationship with Women's Aid, most GPs refuse to register victims because victims don't have documentation that confirms that they are legally residing in the UK. Coupled with this, there is not an established system in place for ensuring that victims can circumvent this barrier and get</p>				<p>WAFNI previously raised the issue of registering with GPs. This matter has now been clarified. Advice is being issued to Women's Aid and Migrant Help by DoJ.</p>

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			<p>registered with a GP. Victims are then forced to attend Accident &amp; Emergency services in hospitals, which is inappropriate to the kind of care they need, and often the A&amp;E will object to the victim getting treatment on a long-term basis.</p> <p>Victims of trafficking should not have to rely on kindness beyond the call of duty and negotiating to access essential health care. GPs must be made aware of their obligation to take on victims and how this should be done in practice, as part of a mandatory, overarching pathway to accessing health and social services for victims of trafficking.</p> <p>Services such as dental treatment and</p>				<p>Problems with accessing dental and ophthalmic services have not been brought to our attention</p>

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			optician services are not available to victims of human trafficking, which is highly problematic especially how painful, even life-threatening, dental and ophthalmic problems can be. This should also be clarified and provided for in the guidance.				before but will now be followed up by DoJ.

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			<p>It is universally accepted that victims of human trafficking may suffer from a range of mental health problems and Post-Traumatic Stress Disorder, which can extend far beyond the 45 day reflection and recovery period. Currently however, the funding for provision of counselling services is only available to victims during this period. This limitation is out of step with the reality of the victim's situation and needs. In our experience, victims don't want</p>			<p>There is a similar lack of clarity, as paragraph 4.9, in paragraph 7.16, where it suggests that discretionary</p>	<p>Noted and will be considered further. Paragraphs 7.16 to 7.19 outline the provision of health and social care for confirmed victims of human trafficking after victim status has been confirmed</p>

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			<p>counselling while going through the hectic period of disclosure, the 45 day reflection period, or when applying to secure leave to remain etc. They are bombarded with interviews and appointments with PSNI, UKBA, the GUM clinic, their legal representation (which may be several people for different aspects of their case), and DHSSPS. At this stage, they are still learning to trust people, they are unsure of their safety, they are possibly unsure of their family's safety or whereabouts, and their understanding of English may be low. It is often not until much later that a victim may be emotionally ready for counselling.</p>			<p>leave to remain should only be granted if assisted voluntarily return home can be ruled out. Though many victims do wish to return home, this should not be automatically assumed to be the next step in the process for victims. Many are involved in ongoing court cases in the UK concerning their trafficking, many are in fear of their lives or danger of re-trafficking if they are repatriated, and it is not the case that UK authorities should attempt to return victims to their own country, in the first instance, and consider leave to remain if this is not feasible. For this reason, we would strongly suggest that the phrase 'and whether assisted</p>	<p>by the Competent Authority.  Accepted. Paragraph 7.16 has been amended.</p>



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			<p>Counselling should happen when a victim is ready, not only offered during a limited fixed period. It should also be offered regardless of immigration status or length of time since disclosure. This should be reflected in the guidelines and implemented as a matter of urgency. We would suggest that the time period during which victims can receive funded counselling services should be extended to a year or more to allow them to utilise the counselling services when they are needed most.</p>			<p>voluntary return home is possible" should be removed from paragraph 7.16.</p> <p>It may also be beneficial for the guidance to clearly outline how the 6 month period of discretionary leave would be extended if the victim's trafficking case lasted longer than 6 months. It is in the interests of not only the victim but also law enforcement agencies to do so, and is in keeping with the UK's obligation under Article 22 of the Convention to subject perpetrators of the crime of human trafficking to "effective, proportionate and dissuasive sanctions".</p> <p>We would also</p>	<p>Noted, but no change to the guidance. This is a matter for the UKBA.</p>

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

Organisation	Contact and liaison arrangements with the PSNI (Paras 7.1 – 7.6) Did you find this helpful? If not how might it be improved?	Support for recovered victims (Para 7.7) Did you find this helpful? If not how might it be improved?	Healthcare needs of recovered victims (Paras 7.8 – 7.10) Did you find this helpful? If not how might it be improved?	Age disputed individuals (Paras 7.11 – 7.14) Did you find this helpful? If not how might it be improved?	Families with children who have been trafficked (Para 7.15) Did you find this helpful? If not how might it be improved?	Persons confirmed as victims of trafficking (Paras 7.16 – 7.19) Did you find this helpful? If not how might it be improved?	Way Forward
						<p>question why it states at paragraph 7.19 that "it will not be necessary for the HSC Trust to consider entitlement to access health and social care in the case of confirmed victims of trafficking who have been given discretionary leave to remain in the UK, refugee status or humanitarian protection". It is unclear as to why this sentence is even included. If it is because victims are automatically entitled to health and social care, there is no need to even mention it. On the other hand, if this to suggest that some victims will not have an entitlement, this should not be the case. Under the Convention, the UK is bound to offer support and care to</p>	<p>No change. The text is considered to be sufficiently clear.</p>

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

<p>Organisation</p>	<p>Contact and liaison arrangements with the PSNI (Paras 7.1 – 7.6) Did you find this helpful? If not how might it be improved?</p>	<p>Support for recovered victims (Para 7.7) Did you find this helpful? If not how might it be improved?</p>	<p>Healthcare needs of recovered victims (Paras 7.8 – 7.10) Did you find this helpful? If not how might it be improved?</p>	<p>Age disputed individuals (Paras 7.11 – 7.14) Did you find this helpful? If not how might it be improved?</p>	<p>Families with children who have been trafficked (Para 7.15) Did you find this helpful? If not how might it be improved?</p>	<p>Persons confirmed as victims of trafficking (Paras 7.16 – 7.19) Did you find this helpful? If not how might it be improved?</p>	<p>Way Forward</p>
						<p>In our experience, victims who are granted leave to remain, and are entitled to benefits, experience significant delays in obtaining them. This is the result of a lack of knowledge of how a victim of human trafficking can actually obtain benefits, on the part of social welfare staff, advice providers and the victims. It is for this reason that it is crucial for the pathway to obtain benefits is detailed in this guidance. Currently, victims are encountering social welfare office employees who don't know what the procedure is for trafficking victims obtaining benefits, and are being forced to repeatedly</p>	<p>Noted. The comment will be identified to the HSCB/NI Adult Safeguarding Partnership .</p>

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

Organisation	Contact and liaison arrangements with the PSNI (Paras 7.1 – 7.6) Did you find this helpful? If not how might it be improved?	Support for recovered victims (Para 7.7) Did you find this helpful? If not how might it be improved?	Healthcare needs of recovered victims (Paras 7.8 – 7.10) Did you find this helpful? If not how might it be improved?	Age disputed individuals (Paras 7.11 – 7.14) Did you find this helpful? If not how might it be improved?	Families with children who have been trafficked (Para 7.15) Did you find this helpful? If not how might it be improved?	Persons confirmed as victims of trafficking (Paras 7.16 – 7.19) Did you find this helpful? If not how might it be improved?	Way Forward
						<p>explain their traumatic circumstances in order to explain why they're entitled to benefits. Victims shouldn't have to endure the trauma of reliving their ordeal if this can be avoided.</p> <p>This scenario can be avoided by outlining the procedure for receiving benefits in this guidance, and assigning a person within each social welfare office to deal with such claims. That person should also be identified to those who are providing support to the victims. A clear pathway to applying for and receiving benefits would also serve to reduce the waiting time for receipt of benefits, which can be up to</p>	

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

Organisation	Contact and liaison arrangements with the PSNI (Paras 7.1 – 7.6) Did you find this helpful? If not how might it be improved?	Support for recovered victims (Para 7.7) Did you find this helpful? If not how might it be improved?	Healthcare needs of recovered victims (Paras 7.8 – 7.10) Did you find this helpful? If not how might it be improved?	Age disputed individuals (Paras 7.11 – 7.14) Did you find this helpful? If not how might it be improved?	Families with children who have been trafficked (Para 7.15) Did you find this helpful? If not how might it be improved?	Persons confirmed as victims of trafficking (Paras 7.16 – 7.19) Did you find this helpful? If not how might it be improved?	Way Forward
						<p>3 months, by cutting out all uncertainty about the process among workers who process the claims. We therefore advocate that a fast-track system be put in place for receiving benefits, along with sufficient training to ensure that relevant staff know the procedure and can process applications with minimal trauma to the victim.</p> <p>We also suggest that all ambiguity as to a victim's entitlement of benefits is removed from the guidance. For instance, at paragraph 7.18 it says that victims will "normally" be able to apply for relevant social security benefits and housing assistance. In our view, the inclusion of the word</p>	

SECTION SEVEN – ROLE OF THE HEALTH AND SOCIAL CARE TRUST

Organisation	Contact and liaison arrangements with the PSNI (Paras 7.1 – 7.6) Did you find this helpful? If not how might it be improved?	Support for recovered victims (Para 7.7) Did you find this helpful? If not how might it be improved?	Healthcare needs of recovered victims (Paras 7.8 – 7.10) Did you find this helpful? If not how might it be improved?	Age disputed individuals (Paras 7.11 – 7.14) Did you find this helpful? If not how might it be improved?	Families with children who have been trafficked (Para 7.15) Did you find this helpful? If not how might it be improved?	Persons confirmed as victims of trafficking (Paras 7.16 – 7.19) Did you find this helpful? If not how might it be improved?	Way Forward
						<p>"normally" leaves room for refusing benefits to confirmed victims of trafficking who have been granted leave to remain. We request that the word "normally" be removed from this sentence, or replaced by the word "always".</p>	

SECTION EIGHT

Organisation	This sets out sources of information and support. Are there any other organisations that should be included?	If yes please provide a brief description and contact details	Way Forward
PSNI	An Garda Siochana – National Police Service within the Republic of Ireland  Ruhama	The Garda National Immigration Bureau carries out deportations, border control and investigations relating to illegal immigration and human trafficking. Telephone Garda HQ +353 1 666 0000  Ruhama – Dublin based NGO which works on a national level with women affected by prostitution and women who are the victims of sex trafficking. Telephone + 353 1 836 0292	These details will be included in the leaflet for victims that DOJ will develop later this year.
SHSCT MIGRANT HELP	List appears comprehensive 8.13 IOM - You may wish to check this as I believe Refugee Action have now been awarded this contract.		Guidance amended.  Accepted. Paragraph 8.31 deleted.  Accepted and amended
LCNI	8.3 and 8.31 are the same Para 8.23 Consider amending the contact for Refugee Action to show that it also offers assistance with voluntary returns.  Consider including the following contacts:  <b>Belfast Friendship Club:</b>  <b>GEMS NI:</b>  <b>HAPANI:</b>	<p><i>Belfast Friendship Club extends a warm welcome to people from around the world and from many walks of life. It provides a safe environment for socializing and integration and offers a wide range of other opportunities for broader participation in Belfast and beyond. Its members include a number of trafficked victims.</i></p> <p>Contact: Stephanie Mitchell at South Belfast Roundtable Telephone: 07548938508 Email: <a href="mailto:stephanie.mitchell@sbfr.org.uk">stephanie.mitchell@sbfr.org.uk</a></p> <p><i>GEMS NI Ltd provide client-centred mentoring support for anyone unemployed and living in South/East Belfast through assistance with job searches, CV development, application form filling and interview techniques and access to local employment, education and training opportunities. GEMS NI delivers a 12 week 'Learning Language for Work' programme. It is also runs a monthly 'Living in Belfast' programme, providing practical information for people living or newly arrived in Belfast.</i></p> <p>Web address: <a href="http://www.gemsni.org.uk">www.gemsni.org.uk</a> Telephone: 028 9033 2313 Email: <a href="mailto:VOTIES@gemsni.org.uk">VOTIES@gemsni.org.uk</a></p> <p><i>HAPANI offers gender-sensitive support and signposting to individuals from the Horn of Africa to Northern Ireland (including trafficked victims). HAPANI can assist with language skills as well as volunteering placements and mentoring.</i></p>	Noted and will be considered for inclusion in the DOJ leaflet for victims.

**SECTION EIGHT**

Organisation	This sets out sources of information and support. Are there any other organisations that should be included?	If yes please provide a brief description and contact details	Way Forward
<b>NIPSA</b>	Also in terms of support services NIPSA would suggest that the Migrant Worker Programme – A Shared Workplace, A Shared Future provided by the Irish Congress of Trade Unions and supported by the European Regional Development Fund under the PEACE 111 Programme and Belfast City Council's Peace and Reconciliation Action Plan is referenced in Section 8 – Sources of Information and Support.	Web address: <a href="http://www.hapani.org">www.hapani.org</a> Telephone: Suleiman Abdulahi 07413525951 Email: <a href="mailto:suleiman@hapani.org">suleiman@hapani.org</a>	Will be considered for inclusion in the leaflet for victims.
<b>CSU</b>	Para 8.3. DOJ does not contract with Women's Aid – WA are sub-contracted by Migrant Help. Consider either incorporating 8.3 into 8.2. or amending 8.3 accordingly. Also, the 24-hour DV Helpline number, whilst an essential reference, looks as if "belongs" to WA – is there some way of highlighting it in isolation?  Para 8.22. We understand that the <a href="http://www.rapecrisisni.com">www.rapecrisisni.com</a> site is no longer available. However, <a href="http://www.roni.ie">www.roni.ie</a> is the link to the Rape Crisis Network Ireland, which includes the centre in Belfast that matches the telephone number within 8.22.  Para 8.26/8.27 – we wondered if the Simon Community NI should be included?		Accepted. Paragraph 8.3 amended.  See comment below from Women's Aid.  Paragraph 8.22 amended.
<b>WAFNI</b>	For the purposes of clarity, we would suggest that the organisations in Section 8 are grouped under the following headings: Competent Authorities for victims of trafficking in Northern Ireland (UKHTC and UKBA); Care and Service Providers for victims of trafficking (Migrant Help and Women's Aid); and Other Relevant Organisations (all other listed organisations). 8.2 and 8.3 should come under the separate heading of "Care & Service Providers"  We request that our full contact details be included in paragraph 8.3.  Our full contact details are as follows:  24 Hour Domestic Violence Helpline: 0800 917 1414 Email: <a href="mailto:24hrs.support@dvhelpline.org">24hrs.support@dvhelpline.org</a> Text SUPPORT to 07797 805 839 Open to anyone affected by domestic violence		Will be included in the leaflet for victims.  The order of organisations listed has been amended.  Accepted and added to Chapter 8.



**SECTION EIGHT**

Organisation	This sets out sources of information and support. Are there any other organisations that should be included?	If yes please provide a brief description and contact details	Way Forward
	<p>We would also point out that Women's Aid Federation Northern Ireland deals with ALL female victims of trafficking – this is not limited to those trafficked for sexual exploitation, but also extends to victims of forced labour and domestic servitude. Therefore we would request that paragraph 8.3 is amended to clarify this.</p> <p>As we are already listed in paragraph 8.3, there is no need to list us again at paragraph 8.31</p>		<p>Accepted. Paragraph 8.3 amended.</p> <p>Noted. Paragraph 8.3 deleted.</p>

APPENDIX 8

Organisation	This sets out links to related sites. Are there any other sites that should be included?	If there yes please provide the name and web address.	Way forward
<p><b>PSNI</b></p> <p>An Garda Síochána – National Police Service within the Republic of Ireland</p> <p>Ruhama</p>	<p>An Garda Síochána <a href="http://www.garda.ie">www.garda.ie</a></p> <p>Ruhama <a href="http://www.ruhama.ie">www.ruhama.ie</a></p>	<p>These will be incorporated into the DoJ leaflet for victims.</p>	
<p><b>SHSCT</b></p>	<p>List appears comprehensive</p>		
<p><b>LCNI</b></p>	<p>A reference to the following trafficking-related documents might be a useful addition:</p> <p>Council of Europe Convention on Action against Trafficking in Human Beings 2005</p> <p>Explanatory report to the Council of Europe Convention:</p> <p>Directive 2011/36/EU Of The European Parliament And Of The Council on preventing and combating trafficking in human beings and protecting its victims 2011:</p> <p>United Nations Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime 2000:</p> <p>UKBA Enforcement Instructions &amp; Guidance on Human Trafficking (Chapter 9):</p> <p>Home Office Guidance issued to Competent Authorities:</p>	<p><a href="http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm">http://conventions.coe.int/Treaty/en/Treaties/Html/197.htm</a></p> <p><a href="http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm">http://conventions.coe.int/Treaty/EN/Reports/Html/197.htm</a></p> <p><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ.L:2011:101:0001:0011:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ.L:2011:101:0001:0011:EN:PDF</a></p> <p><a href="http://www.uncjin.org/Documents/Conventions/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf">http://www.uncjin.org/Documents/Conventions/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf</a></p> <p><a href="http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectional/chapter9?view=Binary">http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/oemsectional/chapter9?view=Binary</a></p> <p><a href="http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcas/es/guidance/competent-guidance?view=Binary">http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/specialcas/es/guidance/competent-guidance?view=Binary</a></p>	<p>All of these will be incorporated into the leaflet for victims.</p> <p>Already in the guidance.</p> <p>Already in the guidance.</p> <p>Included in paragraph 2.16.</p> <p>Accepted and added.</p> <p>A link to UKBA has been added.</p> <p>A link to the Home Office is already included in the guidance.</p>

**Equality and Human Rights**

<p><b>Organisation</b> <b>SHSCT</b></p>	<p><b>This sets out links to related sites. Are there any other sites that should be included?</b> Please confirm if an Equality Screening has been completed in respect of this document and if any potential adverse impacts were noted. The main S75 categories affected by these guidelines is gender and race Lack of appeal other than by judicial review. Equality Screening</p>	<p>The draft Guidance was equality screened in accordance with section 75 and was screened out as it was found to have no adverse impact.</p>
<p><b>BHSCT</b></p>	<p>The Trust notes that there is no reference to a screening document or impact assessment in terms of equality or human rights considerations on the guidance to date. In terms of impact on age, the Trust would proffer that there is a differential but justifiable and proportionate impact on children given that this specific guidance is for adults and that children are afforded more protection and rights under the legislative provision and the child-specific guidance.  The figures would indicate that the guidance may also have a differential impact on females, given that to date there have been more adult female victims trafficked for sexual exploitation however, recent trends may suggest that trafficking labour exploitation may become more prevalent in which case the gender balance may shift. In this case, Women's Aid solely deal with women and children and it may be necessary to look at a partnership with a similar male-oriented agency.</p>	<p>The draft Guidance was equality screened in accordance with section 75 and was screened out as it was found to have no adverse impact.</p>
<p><b>CSU</b></p>	<p>Consider including link to NI Direct</p>	<p>Agreed. Link included.</p>

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90528121  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref: COR/973/2012

Paul Givan MLA  
Chair of the Justice Committee  
Room 242  
Parliament Buildings  
Stormont

29 September 2012

*Dear Paul*

The Committee may recall that earlier this year, the Attorney-General for Northern Ireland brought a prosecution against Peter Hain MP for the common law offence of scandalising the court. The prosecution drew a significant amount of media and political interest at the time, and prompted an amendment to be laid in the Lords to the Crime and Courts Bill which proposed the repeal, without replacement, of the offence for England, Wales and Northern Ireland.

The amendment, which had been brought forward by Lord Pannick QC, was withdrawn at Committee stage to allow the Government time to consider the matter.

Lord McNally, Minister of State, has written advising that having considered and consulted on the issue the Government is minded to support the amendment and asks whether Northern Ireland would want to be included in it.

You will be aware of my general preference for local legislation, except where it is clearly in Northern Ireland's interests to be included in Westminster legislation. In

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this case, I consider that it would be appropriate for this matter to be looked at separately in a Northern Ireland context. England and Wales have had the benefit of a consultation (issued by their Law Commission) on the matter and I would want to ensure that before any decisions are made on repeal, those who wish to express a view in Northern Ireland have been given an equal opportunity to do so.

I have, therefore, replied to Lord McNally advising that Northern Ireland should not be included in the Crime and Courts Bill.

I have asked my officials to take forward the necessary work to examine the issues in Northern Ireland and the Justice Committee will be kept advised of developments as appropriate.



**DAVID FORD MLA**  
**Minister of Justice**

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1573/2012

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Room 242, Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

08 October 2012

Dear Christine

**CRIMINAL JUSTICE BILL**

Thank you for your letter of 21 September.

I can advise members that while the Department of Justice did not conduct a full legal aid impact assessment on the provisions contained in the Criminal Justice Bill, it did consider the implications of the Bill for legal aid.

The provisions in the Bill, in relation to human trafficking, are required to ensure that Northern Ireland complies with the criminal aspects of the EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The Department has no option but to comply with this Directive. Given the hidden nature of human trafficking, the Department is unable to specify how many potential prosecutions may arise from the introduction of the new offences within the Bill. However, we are content that the impact on legal aid, annually, would be small.

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In terms of the other provisions in the Bill, whilst some of them may lead to legally aided challenges, we are again content that they would be small in number and low in cost. In these circumstances, the Department concluded that the changes to be introduced by the Bill would not have a significant effect on legal aid and that conducting a full legal aid impact assessment was unnecessary.



**BARBARA McATAMNEY**  
**DALO**

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 9052 8121  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref: SUB/1565/2012

**FROM:** BARBARA MCATAMNEY  
**DATE:** 05 OCTOBER 2012  
**TO:** CHRISTINE DARRAH

**HUMAN TRAFFICKING: CONSULTATION ON THE PROVISIONS IN THE CRIMINAL JUSTICE BILL ON HUMAN TRAFFICKING AND ENGAGEMENT WITH NON-GOVERNMENTAL ORGANISATIONS (NGOS) – SUMMARY OF RESPONSES AND PROPOSED WAY FORWARD.**

### Summary

**Business Area:** Protection and Organised Crime Division, Safer Communities.

**Issue:** Summary on the outcome of the consultation on the human trafficking provisions in the Criminal Justice Bill, and on engagement with NGOs, and setting out the way forward.

**Restrictions:** The summary of responses is embargoed until published by the Department on 18 October.

**Action Required:** The Committee is asked to consider the summary at its meeting on 11 October.

### Background

The Justice Committee received correspondence from the Department in June and September 2012 outlining the responses received to the consultation on the



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legislative amendments required for Northern Ireland to comply with the criminal aspects of the EU Directive on Human Trafficking.<sup>1</sup>

As you know, the consultation also sought views on how the Department of Justice engages with NGOs and others in relation to human trafficking.

### Key Issues

A summary of responses and the proposed way forward has been prepared for publication and is attached. Due to the need to analysis the responses, unfortunately it was not possible to share this paper with the Committee earlier. This will be published on 18 October on Anti-Trafficking/Anti-Slavery Day. The results of the consultation will be announced at the Tackling Trafficking Together event that day, to which the Committee has been invited. Also attached at Appendix A is a table setting out the views of the respondents.

A number of the respondents also raised wider issues relating to the EU Directive and these are set out in Annex B of the summary. These are being considered as part of the work the Department is doing on compliance with the Directive and the Department's response on these will be published in due course.

You will recall that when DOJ officials briefed the Justice Committee on 20 September, on the human trafficking clauses in the Criminal Justice Bill, members raised the issue of the sentencing regimes in Northern Ireland and England and Wales. This issue was also raised by some respondents who noted that a summary conviction for an offence in Northern Ireland (including human trafficking) attracts a maximum of 6 months' imprisonment, while it is 12 months in England and Wales. Officials advised the Committee that there is a general criminal law procedure difference between Northern Ireland and England and Wales in relation to Magistrates Courts. The Committee noted this but asked if the sentence could be increased to 12 months imprisonment for human trafficking offences only. This

<sup>1</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

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requires further work and officials are giving further thought to this in advance of a further briefing of the Committee on the Bill on 8 November.

**Next Steps**

We will, of course, keep the Committee informed of the work that the Department and the OCTF's Immigration and Human Trafficking Subgroup are doing on human trafficking.

*B. McAtamney*

**BARBARA McATAMNEY  
DALO**

**ENC**

**ANNEX A**

**Embargoed until 11.00am on 18 October 2012**

**CONSULTATION ON AMENDMENTS TO THE  
SEXUAL OFFENCES ACT 2003 AND THE  
ASYLUM AND IMMIGRATION (TREATMENT  
OF CLAIMANTS ETC) ACT 2004 AND  
ENGAGEMENT WITH NON-GOVERNMENTAL  
ORGANISATIONS**

**SUMMARY OF RESPONSES AND WAY  
FORWARD**

**OCTOBER 2012**

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- 
- ANNEX A LIST OF RESPONDENTS
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## 1. INTRODUCTION

1.1 This document provides a summary of responses received to the consultation on amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants etc) Act 2004 to comply with the EU Directive on Human Trafficking<sup>1</sup>. The consultation also addressed engagement with Non-Governmental Organisations (NGOs). The consultation was launched on 5 April 2012. It was in two parts and ran for two distinct periods of eight and twelve weeks, concluding on 31 May and 28 June.

1.2 A total of 30 substantive responses were received. (They included a joint response covering seven groups which was also supported by 20 individuals.) Some commented only on the proposed legislative changes or on engagement only, some on both aspects and some responses also covered wider EU Directive related issues. Comments in the summary of responses below have not been attributed to an individual or organisation, but a list of those who responded is provided at Annex A.

1.3 The first part of the consultation informed the public about the legislative amendments required so that Northern Ireland could comply with the criminal aspects of the EU Directive. Comments on the changes were sought but it was pointed out in the consultation document that these were necessary to ensure compliance.

1.4 The second part of the consultation invited views on how the Department of Justice engages with NGOs and others in relation to human trafficking. Views and suggestions were sought as to how these links could be strengthened.

1.5 What follows in this document is an overview of the main issues raised during the consultation process. As a summary, this does not reflect each and every view on every issue, but seeks to highlight the main issues raised during both parts of the consultation and sets out the Department's plans for taking this work forward.

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<sup>1</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

## **2. SUMMARY OF RESPONSES TO THE LEGISLATIVE AMENDMENTS**

2.1 All of the substantive responses received in relation to the legislative changes were supportive of the proposed amendments. Some respondents expressed disappointment at what they perceived to be a minimalist response being adopted by Northern Ireland in relation to tackling human trafficking. Others commented that consideration should be given to allowing for the prosecution of a person who is resident in the United Kingdom at the time of the offence, but who is not a UK national and who has trafficked someone outside the United Kingdom. It should be noted that the amendments to the legislation which are being taken forward in the Criminal Justice Bill include provision for cases where an offence is committed by an habitual resident.

2.2 Some respondents went beyond the scope of the consultation and provided views on a range of other issues including dual nationality, the legal definition of a habitual resident and a victim, higher penalties for sexual (prostitution) offences, amendment to the Gangmasters Licensing Act 2004, and the specification of aggravating factors in legislation. Another suggestion was that extra-territorial jurisdiction should be established to prosecute individuals who have committed trafficking offences abroad against UK nationals or habitual residents.

2.3 Some respondents drew attention to a difference in sentencing regimes for summary offences between Northern Ireland and England and Wales. Other respondents suggested that there should be mandatory prison sentences for trafficking offences, including using the services of victims.

### **3. SUMMARY OF RESPONSES ON ENGAGEMENT**

#### **3.1. HOW NON-GOVERNMENTAL ORGANISATIONS CAN ASSIST GOVERNMENT**

3.1.1. Many respondents felt that the non-governmental sector is in a position to provide invaluable assistance to the government in a variety of ways. These included - campaigning, education, victim support and awareness raising.

3.1.2. Some respondents focussed on how organisations could assist the Department of Justice in relation to victim care and some advised that their organisations are a valuable resource, as they are already working with the public on raising awareness. In a similar vein, the importance of continuing consultation with groups on the direction of public campaigns was highlighted to ensure that communication flows easily from the 'grass roots' to the 'top'.

#### **3.2 STRUCTURES**

3.2.1 A number of groups suggested that the Department of Justice should set up a working group to engage with NGOs on human trafficking. Some groups suggested that this should be a statutory group while others suggested a non-statutory approach.

3.2.2 A further suggestion from some respondents was the establishment of a forum/steering group, with regular quarterly meetings involving key awareness groups. One respondent noted that there was a useful model provided by the Racial Equality Forum's Thematic Sub-group on Immigration.

3.2.3. One respondent suggested a single point of contact for those in Northern Ireland working on trafficking matters.

### **3.3 STRATEGIES/ WORK PLANS ETC**

3.3.1. One respondent suggested that the Department of Justice should bring voluntary and statutory agencies together to agree a Framework for Action; another that protocols are established between statutory and non-statutory bodies and NGOs.

3.3.2. Suggestions from other respondents included the creation of a Northern Ireland Prevention Strategy which links to a UK strategy and a statement of intention for improving and building upon Department – Community relationships in the fight against human trafficking.

3.3.3. One respondent felt that the Northern Ireland Executive should take a lead in ensuring women's rights are upheld, and should carry out a post-conflict gender analysis while another commented that the proposed New Racial Equality Strategy (OFMDFM) should have a specific dedicated section on human trafficking.

### **3.4 AWARENESS RAISING/ EDUCATION/ RESEARCH**

3.4.1. Two respondents proposed the development of a high profile campaign aimed at men, perhaps focussing on men's health awareness or a compelling visual campaign, possibly similar to recent drink-driving and speeding TV campaigns in Northern Ireland. It was also suggested that any campaign against human trafficking should focus on forced labour and organ harvesting, as well as the sex trade. A further suggestion was that the Department of Justice promote Stop the Traffik's taxi campaign. Another was that the haulage industry should be considered as potential partners in the sharing of awareness and information on a Europe-wide level.

3.4.2. Some respondents highlighted the issue of education. This included education of the general public; specifically those who might come into contact with trafficking victims, such as transport workers, social services, UK Border Agency. Some respondents recommended mainstreaming anti-



trafficking and awareness-raising into primary and secondary level education. One of the respondents stated that many civil groups have produced materials which they felt could be adapted for use in schools and youth groups.

3.4.3. A number of respondents highlighted the importance of consulting with NGOs and others in developing awareness raising campaigns, with some suggesting an audit of the community and voluntary sector to establish current levels of activity. One respondent suggested that the Department of Justice hold a conference or summit, devoted to raising awareness of human trafficking in Northern Ireland.

3.4.4. Two respondents highlighted the need for dialogue with the faith community. The first respondent stated that they have established a network of christian individuals from across various NGOs, with the idea of sharing prayer, information and resources, and that the Department of Justice should engage with this group. The second highlighted the fact that church and faith communities have a particular responsibility to combat demand for human trafficking by actively promoting core values such as respect for life and human dignity.

3.4.5 One respondent noted that Trade Unions have a role to play on the direction of public campaigns.

## **3.5 TRAINING**

3.5.1. One of the respondents suggested that it would be beneficial for relevant airport and ferry terminal staff to be trained on the signs of trafficking. Another felt that all PSNI officers should undergo a face-to-face training session on human trafficking.

3.5.2. One response highlighted the importance of regular training opportunities for first responder organisations, in particular Migrant Help and Women's Aid. A further respondent stated that the Department of Justice should develop an effective Northern Ireland wide training strategy for identifying victims and appropriate responses.

### **3.6 TOOLS**

3.6.1. One respondent suggested that a specific confidential telephone number for reporting suspicions of human trafficking activity should be set up.

3.6.2. Suggestions from respondents also included the development of a more visible portal of information available, warranting a specific website or webpage; that new developments are published on the Department of Justice website, and that thought should be given to using social media.

#### **4. THE EU DIRECTIVE**

4.1 A number of the respondents raised other issues relating to the EU Directive. These covered, *inter alia*, the non-prosecution of victims; that proceedings should not be dependent on reporting by the victim; discretion for the judiciary to extend the 45 day reflection period; the specification of aggravating factors in the legislation; the lack of an adequate definition of trafficking and of 'victim'; the treatment of victims in criminal proceedings; the creation of a rapporteur; children's issues and victim support.

4.2 Specific issues raised in relation to Articles in the EU Directive from both parts of the consultation are set out in Annex B. These are being considered as part of the work the Department is doing on compliance with the Directive and the Department's response on these will be published in due course.

## **5. THE DEPARTMENT'S RESPONSE TO THE ISSUES RAISED IN THE CONSULTATION AND THE WAY FORWARD**

5.1 The Department's response to the issues raised during both parts of the consultation is set out in Annex C.

### **The legislative provisions**

5.2 The Department is making amendments to primary legislation, by the creation of new offences through the Criminal Justice Bill, to ensure that Northern Ireland complies with the criminal aspects of the EU Directive. They are:

- the creation of an offence where a person is trafficked outside the United Kingdom for sexual exploitation. The offence will deal with the abuse of trafficked victims at all stages of their journey or ongoing travel, and may be committed by British citizens, habitual residents of Northern Ireland and bodies incorporated under the law of a part of the United Kingdom;
- the creation of a similar offence to allow for the prosecution of a person who has trafficked someone anywhere outside the United Kingdom for labour or other exploitation; and
- provision that an offence is committed where a United Kingdom resident (who has not previously been trafficked into the United Kingdom) is trafficked for labour or other exploitation wholly within the United Kingdom. This is already an offence for sexual exploitation.

### **Definitions**

5.3. A number of respondents suggested that definitions of human trafficking, and of 'victim' should be included in the legislation. Human trafficking is already defined by both the Palermo Protocol and in Article 4 of

the Council of Europe Convention on Action against Trafficking in Human Beings. Article 4 of the Convention also defines 'victim'. These definitions are widely accepted and understood. The Department does not agree that they need to be further defined in domestic legislation. There is a considerable risk in being overly prescriptive and enshrining certain aspects in legislation as this can –

- Limit flexibility in relation to dealing with individual cases;
- Make it more difficult to respond quickly to changes in criminal behaviour; and
- Could, for example in the case of defining 'habitual residence', provide criminals with a means to work around the legislation.

### **A minimalist approach?**

5.4.1 Concerns were raised during the consultation about what many considered to be a minimalist approach. The Minister of Justice is clear that changes, whether through statute or administrative means, which will assist the work against trafficking will be considered. But they must add to the provisions and the work already in place. Some respondents asked why Northern Ireland was simply mirroring the changes made to human trafficking legislation in England and Wales. That is, however, not the case. Sections 109 and 110 of the Protection of Freedoms Act 2012 implement the mandatory changes required to the legislation in England and Wales to comply with Article 10(1) of the EU Directive. The provisions in the Criminal Justice Bill will make these changes for Northern Ireland and will also implement the discretionary changes set out in Article 10(2) of the Directive in that the offence will extend to habitual residents and bodies incorporated under the law of a part of the United Kingdom.

5.4.2 In addition, Article 13 of the European Convention provides that there should be a recovery and reflection period of at least 30 days for potential victims of human trafficking. The minimum recovery and reflection period in the United Kingdom is 45 days which can be, and in many cases is, extended by the Competent Authority.

5.4.3 The Department is also aware of concerns expressed that legislation in Northern Ireland in relation to human trafficking is somehow deficient as it does not, for example, cover all aspects of trafficking such as forced begging or enforced control. Forced begging, however, constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and is therefore covered by the existing legislation. The case of *Siliadin v France* in 2005 defined enforced control and Northern Ireland legislation is compliant with this.

### **Sentencing options**

5.5.1 Some respondents also suggested that current penalties in relation to human trafficking are not harsh enough. Article 4.2 of the EU Directive requires that Member States shall take the necessary measures to ensure, in certain circumstances set out in the Article, that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment. The maximum term of imprisonment in Northern Ireland under provisions in the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 is 14 years.

5.5.2 The Lord Chief Justice's Sentencing Group asked Judge Burgess to issue sentencing guidelines in this area in April 2012 in the judgment in the *R v Mataya Pis* case. The Minister of Justice intends adding trafficking for non-sexual purposes to the schedule of offences referable to the Court of Appeal on the grounds of being unduly lenient. This will be done through secondary legislation. Trafficking for sexual exploitation is already covered.

### **Engagement with NGOs and others**

#### **Setting up a Human Trafficking Engagement Group**

5.6.1 The Department was conscious in undertaking the consultation that our engagement with NGOs could be improved and formalised, not least because of the increase in the number of such bodies. It also recognises that there is considerable value in capturing the energy, enthusiasm and ideas that NGOs have and that tackling trafficking together will benefit everyone in helping to deal with this abhorrent crime. A number of respondees were strongly in favour of setting up either a statutory or non-statutory working group to facilitate engagement on human trafficking between government and NGOs.

5.6.2 The Minister has agreed that a non-statutory Human Trafficking Engagement Group should be set up, under the umbrella of the Organised Crime Task Force (OCTF). The intention is that the membership will comprise many of the NGOs who responded to the consultation on engagement, with other groups invited to attend or participate as required. The membership would not be set in stone and could be added to or changed as the work develops. However it is felt that there is a need to keep the numbers on the Group to a manageable level to maintain focus.

5.6.3 The purpose and role of the HT Engagement Group will be to –

- identify the role of statutory and non-statutory groups;
- identify core information needs;
- identify any gaps in information and provision of services;
- facilitate a partnership approach and joint working amongst Government Departments, statutory bodies, voluntary and community organisations and other agencies to help participating organisations avoid duplication of effort and share resources, and expertise;
- provide an arena for exchange of information and ideas;
- identify best practice and lessons learned;
- identify areas where more research is required; and
- assist Government and law enforcement agencies etc in their work in tackling human trafficking.

5.6.4 Invitations to organisations to join the Group will be issued shortly and it is hoped that the first meeting will be held before the end of the year.

### **Strategies and work plans**

5.7 The OCTF Immigration and Human Trafficking (IHT) Subgroup is taking forward work on drawing up an action plan. The Department will give further consideration to the need for a specific Northern Ireland Strategy on Human Trafficking to complement the UK Strategy.

### **Awareness raising/ education/ research**

5.8 The following issues will be considered by the IHT Subgroup and the Human Trafficking Engagement Group

- ideas for research such as on the demand that fuels sexual exploitation and exploitative labour
- an audit of the community and voluntary sector to establish current levels of activity and a mapping exercise to have a clear idea of which NGOs are working on human trafficking.

### **Training**

5.9 A number of respondents raised the topic of training, both specifically in relation to training of particular groups such as the PSNI and staff at airports and ferry terminals and more generally in relation to the need for an effective NI-wide training strategy for identifying victims and appropriate responses. The IHT Subgroup had already identified that a training needs analysis should be carried out and this will form part of the action plan and work programme which the Subgroup is drawing up.

### **Tools**

5.10 Suggestions included setting up a specific confidential telephone. This has not been agreed as there are already helplines available such as



Crimestoppers and Migrant Help. Other suggestions such as putting in place a more visible portal of information and issuing regular updates will be considered by the IHT Subgroup and/or the HT Engagement Group.

## ANNEX A

### LIST OF RESPONDENTS

Legal Services Commission  
Health and Social Care Board  
Public Prosecution Service  
Soroptomist International  
Pat Knowles, Senior Social Worker – Belfast Trust  
QUB School of Law Organised Crime Project  
South Tyrone Empowerment Programme (STEP)  
Nathan McCavery  
James Brewster  
Urban Angels  
Amnesty International  
Hazel Cochrane  
Hannah Milligan  
Gemma Wilson, Belfast Abolition Collective  
Ad Hoc Working Group on Human Trafficking, QUB Human Rights Centre  
Northern Ireland Evangelical Alliance  
Hugh Marcus  
Law Centre NI  
Northern Ireland Commissioner for Children and Young People  
Phil Hodge  
Dan Boucher, CARE in Northern Ireland  
Dungannon and South Tyrone Borough Council  
Craigavon Trades Council  
Northern Ireland Policing Board  
Northern Ireland Catholic Council on Social Affairs  
Ben Connolly, Antrim ACT  
Northern Ireland Council for Ethnic Minorities  
Northern Ireland Human Rights Commission  
British Red Cross

A joint response was provided on behalf of: International Justice Mission; Craigavon A.C.T.; North Down A.C.T.; Belfast Abolition Collective; The A21 Campaign; Solas Trust; and No More Traffik on our Streets. The response was also supported by:

Emma Wood, Belfast Abolition Collective  
Pauline Wilson  
Helen Cupples, A21  
David Midgley  
Dónal Kearney  
Kar-Li Chan  
Sarah Ashley-Cantello  
Laura Wylie, Craigavon A.C.T.  
Willem and Julie Koorts  
Lorna McFarland  
Alan Wilson  
Cheryl Jenkins

Caroline Ibrahim  
Conor Adams  
Diane Goodwin  
Dave Wiggins, Lurgan YMCA  
Angela Surgeonor  
Kathleen McCartan  
Karen Barkley, Craigavon A.C.T.  
Chloe Marcus

## ANNEX B

### **Issues raised in response to the consultation which are specific to the EU Directive on Preventing and Combating trafficking in Human Beings and Protecting its Victims (the EU Directive)<sup>1</sup>**

#### **Article 8: Non-prosecution or non-application of penalties to the victim**

The inclusion of a provision on non-criminalisation of trafficked victims in legislation can further strengthen the protection of victims and would be more in line with Article 8 (Non-Prosecution or Non-Application of Penalties to the Victims) of the EU Directive as well as Article 26 of the Council of Europe Convention.

Non-prosecution or non-application of penalties to the victim - this issue has not yet been sufficiently addressed. The Directive does not require this to be enshrined in primary legislation, but provision must be made to ensure that there are robust guidelines in place concerning the non-prosecution of the victim of trafficking.

#### **Article 9: Investigation and prosecution**

The Directive mandates that the proceedings should not be dependent on the reporting or accusation of the victim, and that the proceedings should be able to continue if the victim withdraws their statement (Article 9(1)) but they are not set out in the legislation governing Northern Ireland.

Northern Ireland may already be complying with the provisions under Articles 9(3) and 9(4) regarding training and the availability of proper investigative tools. However, if this is not contained in the legislation, there is a risk that these services are vulnerable to cuts.

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<sup>1</sup> These are being considered as part of the Department's work on compliance with the EU Directive.

## **Article 11: assistance and support for victims of trafficking in human beings**

Victim support agencies provide an excellent service to victims, for example, they provide practical support and housing, emotional support, guidance through the National Referral Mechanism and provide assistance with health needs. It is very clear however, that these agencies cannot sustain the needs of all victims and require extensive support. Other NGOs exist that have the necessary expertise to provide the support required. This level of expertise should be availed of in order to provide an efficient and effective service.

Migrant Helpline and Women's Aid are the only designated First Responders that can make a formal referral into the NRM.

The Department of Justice and the UKBA should work with NGOs to identify whether there is capacity in Northern Ireland for an existing NGO to become an official first responder organisation, which will act as a focal point working solely on human trafficking.

Independent Support Advocate for trafficking victims – To ensure that trafficked victims can turn to an agency that is independent from the arbiter of their request to remain in the UK and likewise of their request for service provision, a system of independent advocates should be established for victims, including children and young people.

Detailed information is also required around victim identification. The identification of victims depends heavily on the knowledge, experience and commitment of individual police officers and public officials or (where they exist) small specialist units. A main problem has been the absence of co-ordination among the organisations dealing with trafficking. This can, and does ultimately lead to victims not being properly identified.

It is also imperative that anti-trafficking measures do not restrict access to processes which allow people to claim international protection.

There is support currently being provided in line with that described in Article 11, but if it is not set out in national legislation then Northern Ireland will remain at risk of non-compliance

There should be discretion for the judiciary to extend the 45 day reflection period.

The Department of Justice, should legislate – beyond the area mandated by the 2011 EU Directive related to the offender – to protect the human rights of the victims of human trafficking through the introduction of a comprehensive trafficking bill.

#### **Article 12: Protection of victims in criminal proceedings**

Victims of trafficking should have access to legal advice (Article 12(2)). It is unclear whether current support is offering this to an adequate level. England and Wales introduced additional legislation in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to ensure victims of labour trafficking would have proper access to free legal counselling.

Adequate protection for victims of trafficking during the investigation and prosecution of an offence should be enshrined in the legislation, including amendments to the Criminal Evidence (Northern Ireland) Order 1999 to ensure “special measures” for trafficking victims acting as witnesses (Article 12(4)).

Treatment of victims in criminal investigations should be provided for in legislation.

Victims should be automatically eligible for special measures.

There should be special status for victims of trafficking once identified, similar to those who have experienced domestic abuse and rape.

**Articles 13, 14 and 15: provisions on assistance, support and protection measures for children**

A distinction should be made between children and young people who are subject to immigration control and at risk of, or who have been, trafficked.

Special consideration should be given to children who have been trafficked or suffer as a result of their carers being trafficked.

Northern Ireland does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare.

Specific foster care arrangements should be put in place if possible, to accommodate individual needs in respect of culture and language, this should be in protected accommodation as far as possible.

There is a need for a Guardian or Representative for Trafficked Children (Article 14(2) & 16(3)). Current legislation in Northern Ireland does not provide for a Guardian.

#### **Article 17: Compensation to victims**

Given the difficulty victims of trafficking in England and Wales have had accessing compensation, there should be clarity in the Northern Ireland legislation about exactly what rights victims have to the different compensation schemes available (e.g. criminal injuries compensation, employment tribunal etc) and, crucially, whether they have leave to remain to avail themselves of such opportunities.

#### **Article 18: prevention**

Funding for NGOs in providing the necessary support is a major issue. There is an insufficient lack of support to trafficking victims, requiring more financial flexibility and practical awareness.

While actions are being taken to raise awareness and prevent trafficking in human beings, this is another area that has not been provided for in legislation. Particular issues of concern are actions taken to reduce demand (Article 18(1)) and regular training for those officials likely to come into contact with victims or potential victims (Article 18(3)).

There should be more North/South co-operation between the respective border agencies, NGOs, PSNI/Gardai and political representatives to deal with the trafficking of people across the border.

#### **Article 19: national rapporteur or equivalent mechanisms**

Appoint a Rapporteur to maintain oversight of anti-trafficking efforts.

There should be a Regional Anti-trafficking Co-ordinator.

Appoint an independent Northern Ireland anti-trafficking "commissioner."

The UK has an interdepartmental ministerial group in place which, it has been maintained, together with the UK Human Trafficking Centre, fulfils the Directive's requirement to have a mechanism equivalent to a national rapporteur (Article 19) This is inadequate primarily because the monitoring system is not independent of government.



ISSUES RAISED IN CONSULTATION ON THE NEW OFFENCES AND NGO ENGAGEMENT ANNEX C

Topic	Comments from respondents	Department's views	Way Forward
Structures - Working groups etc	Set up a statutory/ non-statutory working group.	Non-statutory Group to be set up.	Invitations to Human Trafficking Engagement Group to be issued in October. First meeting of HT Engagement Group to be held before the end of 2012.
	Establish a forum / steering group.	See above	
	Set up a community partnership	See above	
Awareness raising/education/ research	Consider model provided by the Racial Equality Forum's Thematic Sub-Group on Immigration.	The Racial Equality Migrant Workers Thematic Subgroup, which is chaired by Department of Education and Learning and brings together around 40 groups to look at issues concerning migrant workers, is a useful model.	Noted. No action required.
	Conference or summit devoted to raising awareness	Agree	To be considered by HT Engagement Working Group
	Focused campaigning – a more streamlined, coordinated and high profile campaign directed at the demand side ie men's awareness	Agree in principle	Consider in context of the OCTF's Changing the Mindset project and awareness raising across all areas of human trafficking

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Topic	Comments from respondents	Department's views	Way Forward
<p><b>Awareness raising/education/ research</b></p>	<p>Promote Stop the Traffik's taxi campaign</p>	<p>Consider</p>	<p>Consider in context of Changing the Mindset project</p>
	<p>Consult with NGOs and others in developing awareness raising campaigns</p>	<p>Agree</p>	<p>Will be facilitated by NGOs membership of HT Engagement Group</p>
	<p>Trade Unions are consulted on the direction of public campaigns</p>	<p>Agree</p>	<p>TU membership of HT Engagement Group to be sought</p>
	<p>Dialogue with the faith based sector - using the Community Faith Forum (operated by DSD)</p>	<p>Agree</p>	<p>Representative of faith based sector to be sought for membership of HT Engagement Group</p>
	<p>Mainstreaming anti-trafficking prevention and awareness into primary and secondary level education/ education of young people</p>	<p>This is primarily a matter for the Department of Education (DENI)</p>	<p>OCTF Immigration and Human Trafficking Subgroup and Changing the Mindset Subgroup to consider and liaise with DENI.</p>
	<p>By the end of 2012 there is specific research commissioned on the demand that fuels sexual exploitation, exploitative labour</p>	<p>Consider</p>	<p>OCTF Immigration and HT Subgroup to consider research priorities in liaison with HT Engagement Group</p>

Topic	Comments from respondents	Department's views	Way Forward
<p><b>Awareness raising/education/research</b></p>	<p>Audit of the community and voluntary sector to establish current levels of activity</p>	<p>Consider</p>	<p>OCTF Immigration and HT Subgroup/HT Engagement Group to consider</p>
	<p>Mapping exercise to have a clear idea of which NGOs are working on human trafficking, and to what extent the organisation focuses on these issues.</p>	<p>Agree</p>	<p>OCTF Immigration and HT Subgroup/HT Engagement Group to consider</p>
	<p>The haulage industry should be considered as potential partners in the sharing of awareness and information on a Europe-wide level.</p>	<p>Consider</p>	<p>OCTF Immigration and HT Subgroup to consider as part of the work on raising awareness.</p>
<p><b>Training</b></p>	<p>An effective NI-wide training strategy for identifying victims and appropriate responses.</p>	<p>Agree</p>	<p>OCTF Immigration and HT Subgroup to draw up a training needs analysis and plan</p>
	<p>Relevant airport and ferry terminal staff to be trained on the signs of trafficking</p>	<p>Consider</p>	<p>OCTF Immigration and HT Subgroup to consider in context of work on the training needs analysis and plan</p>
	<p>All PSNI officers should undergo a face-to-face training session on HT</p>	<p>Training is already in place</p>	<p>Not required – on-line training is already available.</p>
	<p>First responder organisations (Migrant Help and Women's Aid) are given regular training opportunities. There should be trained police and</p>	<p>In place</p>	

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Topic	Comments from respondents	Department's views	Way Forward
	<p>customs officers at airports and ports</p>	<p>and customs officers.</p>	
	<p>NI prevention strategy which links to a UK strategy</p>	<p>NI Action Plan on HT to be developed Consider NI Strategy</p>	<p>OCTF Immigration and HT Subgroup to take work on action plan forward. Further consideration to be given to developing a specific Northern Ireland HT Strategy to complement the United Kingdom Strategy. To be considered by HT Engagement Group</p>
<p><b>Strategies/work plans etc</b></p>	<p>Bring voluntary and statutory agencies together to agree a Framework for Action</p>	<p>Agree in principle</p>	<p>To be considered by HT Engagement Group</p>
	<p>Protocols between statutory and non-statutory bodies and NGOs</p>	<p>Agree in principle</p>	<p>To be considered by HT Engagement Group</p>
	<p>A statement of intention for improving and building upon Department – Community relationships in the fight against human trafficking.</p>	<p>Agree in principle</p>	<p>To be considered by HT Engagement Group</p>
	<p>NI Executive to take a lead in ensuring women's rights are upheld and carry out a post-conflict gender analysis</p>	<p>This is a matter for OFMdfM</p>	<p>DOJ to refer to OFMdfM to consider.</p>
	<p>The proposed New Racial Equality Strategy (OFMdfM) should have a specific dedicated section on human trafficking and on the role the Strategy can play in fostering engagement of Black</p>	<p>This is a matter for OFMdfM</p>	<p>DOJ to refer to OFMdfM to consider, with advice from DOJ on the human trafficking aspect.</p>

Topic	Comments from respondents	Department's views	Way Forward
	<p>Minority Ethnic communities regarding Government policy.</p>		
<b>Tools</b>	<p>Specific confidential telephone number</p> <p>A more visible portal of information available - this would warrant a specific website or page.</p> <p>Regular updates to stakeholders and hold information sessions on new policy developments in this area</p> <p>Publish new developments on the DOJ website and consider using social media</p>	<p>Already in place – Crimestoppers/Migrant Helpline</p> <p>Consider</p> <p>Consider how to deliver</p> <p>Consider how to deliver</p>	<p>Further publication of existing numbers to be considered in the context of the Changing the Mindset project.</p> <p>OCTF Immigration and HT Subgroup/Engagement Group to consider</p> <p>OCTF Immigration and HT Subgroup to consider</p> <p>OCTF Immigration and HT Subgroup to consider</p>
<b>Legislative issues</b>	<p>A fine not exceeding level 3 on the standard scale (£1,000) in relation to payment for the sexual services of a prostitute who has been coerced does not serve as strong deterrence – this fine should be increased.</p> <p>The system of licensing employers under the Gangmasters Licensing Act (GLA) 2004 is not adequate</p>	<p>This is a strict liability offence.</p> <p>A review of the Gangmasters Licensing Authority was conducted by DEFRA and changes have been announced including targeting its work,</p>	<p>DOJ to look at the existing offence to see if any changes are required and consider what further steps can be taken with regard to prostitution, in the review of the Strategy for Managing Women Offenders.</p> <p>DOJ to refer to Department for Environment, Food and Rural Affairs (DEFRA)/Department for Agriculture and Rural Development (DARD) for consideration.</p>

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Topic	Comments from respondents	Department's views	Way Forward
<p><b>Legislative issues Cont'd</b></p>	<p>The maximum penalty for acting as a gangmaster without a proper license should be increased.</p> <p>A summary conviction for the same offence in Northern Ireland attracts a maximum of 6 months' imprisonment, while it is 12 months in England and Wales.</p>	<p>streamlining the licensing process and looking at the scope to use civil penalties.</p> <p>Set out in Section 12 of the GLA 2004. On summary conviction in NI (and in Scotland) imprisonment for up to 6 months or up to £5,000 or both. On indictment, up to 10 years or a fine or both.</p> <p>There is a general criminal law procedure difference between Northern Ireland and England and Wales. When dealing with summary offences a NI District Judge has power under the Magistrates' Court (Northern Ireland) Order 1981 ("the 1981 Order") to impose a fine up to the maximum of the statutory scale of £5,000 or six months in prison or both. The 1981 Order provides that where an indictable offence can be heard in the magistrates' courts and the sentence exceeds six months, the defendant may opt for trial in the higher Crown Court and, where s/he does not so opt, the District Judge in this situation can impose a sentence of imprisonment up</p>	<p>DOJ to refer to DEFRA/DARD for consideration.</p> <p>This is due to a general criminal law procedure difference between Northern Ireland and England and Wales. DOJ to consider the matter further.</p>

Topic	Comments from respondents	Department's views	Way Forward
<p><b>Legislative issues Cont'd</b></p>	<p>The standard summary procedure imprisonment period is six months. Section 154 of the Criminal Justice Act 2003 made provision for E&amp;W to increase the general limit on magistrates' courts powers to impose imprisonment in respect of any one offence (comparable to our six months powers) from six to twelve months.</p>	<p>to 12 months.</p>	
	<p>Section 71 of the Coroners and Justice Act 2009 prohibits slavery, servitude and forced labour. However, there is a legislative gap in relation to summary conviction where the offence carries only 6 months' imprisonment in Northern Ireland when it is 12 months in England and Wales. This should be amended accordingly.</p>	<p>See above.</p>	<p>See above.</p>
	<p>Current penalties and sentences in</p>	<p>Article 4.2 of the EU Directive requires that Member States shall take the</p>	<p>Not agreed. The maximum term of imprisonment in Northern Ireland under</p>

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<b>Topic</b>	<b>Comments from respondents</b>	<b>Department's views</b>	<b>Way Forward</b>
<p><b>Legislative issues</b> <b>Cont'd</b></p>	<p>relation to human trafficking are not harsh enough.</p>	<p>necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:</p> <p>(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;</p> <p>(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ( 1 );</p> <p>(c) deliberately or by gross negligence endangered the life of the victim; or</p> <p>(d) was committed by use of serious violence or has caused particularly serious harm to the victim.</p>	<p>provisions in the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 is 14 years.</p>
	<p>There should be mandatory prison sentences for trafficking offences including users of trafficked victims</p>		<p>Sentences are a matter for the judiciary. Guidance was set down by Judge Burgess in R v Pis in 2012.</p>
	<p>"Habitual residence" should be defined in legislation</p>	<p>The term "habitual residence" occurs in a number of Conventions and Directives and the common denominator is that it is not defined in</p>	<p>A statutory definition is not required.</p>



Topic	Comments from respondents	Department's views	Way Forward
<p><b>Legislative issues</b> <b>Cont'd</b></p>	<p>Definition of "victim" is required</p> <p>Extra-territorial jurisdiction should be established to prosecute individuals who have committed trafficking offences abroad against UK nationals or habitual residents.</p>	<p>them. The Human Trafficking Directive contains no definition. Case law is clear that it should be given its ordinary and natural meaning having regard to the facts of the case.</p> <p>The accepted definition of human trafficking is already set out in United Nations Palermo Protocol and in Article 4 of the Council of Europe Convention on Action against trafficking in Human Beings. The Convention defines a victim as any natural person who is subject to trafficking in human beings as defined in Article 4. The National Referral Mechanism is the victim identification process.</p> <p>The provisions of the Criminal Justice Bill provide for jurisdiction over British citizens, persons habitually in Northern Ireland or companies registered in the UK in respect of sexual trafficking or labour exploitation activities undertaken by them in countries outside the UK.</p> <p>In particular, clause 5 of the Criminal Justice Bill inserts into the Sexual</p>	<p>This is not required on a legislative basis.</p> <p>Not agreed, if the intention of the suggestion is to catch foreign individuals or companies trafficking or exploiting British citizens etc then this would be beyond our legal jurisdiction and would be for the country concerned.</p>

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Topic	Comments from respondents	Department's views	Way Forward
<p><b>Legislative issues</b> <b>Cont'd</b></p>	<p>Aggravating factors should be specified in the legislation.</p>	<p>Offences Act 2003 a new section 58A ("Trafficking outside the UK for sexual exploitation").                      Clause 6 of the Bill introduces a similar extension of jurisdiction in what will be section 4(3A) ("Trafficking people for other exploitation") of the Asylum and Immigration ( Treatment of Claimants, etc) Act 2004 (" the 2004 Act").                      These reforms comply with the mandatory extension of jurisdiction required in respect of offenders who are nationals of a Member State (see article 10(1)(b) of the Directive 2011/36/EU (" the Trafficking Directive")) and exercise the <u>discretionary</u> option to extend jurisdiction to companies established in and habitual residents living in the Member State ( see article10 (2) (a) to (c) of the Trafficking Directive).                      The Magistrates' Courts sentencing guidelines set out general principles of sentencing which detail general aggravating and mitigating factors. In addition, the guidance issued at the request of the Lord Chief Justice's Sentencing Group in 2012 in the Crown</p>	<p>Not required on a legislative basis. Aggravating factors have been set out in Sentencing Guidelines and are matters for the trial judge to consider in each individual case.</p>

<b>Topic</b>	<b>Comments from respondents</b>	<b>Department's views</b>	<b>Way Forward</b>
<b>Legislative issues Cont'd</b>		Court case of R v Pis, set out aggravating factors in relation to offences for human trafficking. These guidelines were applied in the R v Ron Chen and others case in July 2012.	
<b>Victims support/children</b>	The Young Witness Prevention and Support Services should be in legislation	The NSPCC is funded by the DOJ to operate the Young Witness Scheme to support witnesses under 18 years when giving evidence in court.	Not required on a legislative basis.
<b>Other</b>	There should be accelerated case handling for victims.  A special PSNI team should be set up to tackle human trafficking.	Not clear if this relates to handling by the National Referral Mechanism or criminal cases.  An online training package for police, targeted at frontline officers and staff to assist in the recognition of signs of trafficking, is already in place. Over 2500 PSNI officers and staff have successfully completed the training. In addition, PSNI's Organised Crime Branch has introduced and delivered bespoke training	PPS will take forward with the Competent Authorities and the PSNI.  Not agreed; frontline officers need to be able to deal with these issues.

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<b>Appendix A</b>			
<b>Respondent</b>	<b>Comments on legislation/EU Directive issues</b>	<b>Comments on engagement with NGOs/EU Directive issues</b>	<b>General comments</b>
Legal Services Commission	No contrary views	No contrary views	-Would wish to ensure a full Legal Aid Impact Assessment is completed. None
Health and Social Care Board	-HSCB supports the new offences. The first offers improved protection to vulnerable children and adults.	-Proposals appear to cover work to prevent human trafficking and to protect victims of trafficking. Will be necessary for the DoJ to develop strong working partnerships with a range of organisations and agencies. -Important to ensure that responses to the needs of victims are integrated within all government policy initiatives, and reflected in the delivery plans of a range of providers.	None
Public Prosecution Service	-It may be appropriate for DoJ to consider extending the proposed offence for prosecution of a UK national who has trafficked someone outside the UK. Consideration could be given to allowing for prosecution of a person who is resident in UK at time of the offence but who is not a UK national and who has trafficked someone outside the UK.	No views	None
Soroptomist International	-Agree with the principles. They ask whether existing legislation covers the case of a non-UK resident or National or an EU resident or national trafficking within the UK or EU jurisdiction, living in the UK or an EU state and carrying on a business within that jurisdiction the basis of which involves the exploitation of an individual.	-Agree that contact with all recognised NGOs, as well as law forces, is essential. -Call for a specific confidential telephone number and witness protection are vital.	None

<p>Soroptomist International</p>	<p>- support the two amendments.</p>	<ul style="list-style-type: none"> <li>- They see a need for a comprehensive prevention strategy, which would allow the public to be more involved and encouraged to inform the police of their suspicions.</li> <li>- They recommend the appointment of a clearly identifiable Regional Anti-trafficking Co-ordinator. The Co-ordinator would act as a spokesperson for the work and would co-operate with colleagues in Great Britain, the Republic of Ireland and the European Union.</li> <li>- They recommend the establishment of a forum / steering group with             <ul style="list-style-type: none"> <li>- They see a need for a comprehensive prevention strategy, which would allow the public to be more involved and encouraged to inform the police of their suspicions.</li> </ul> </li> <li>- They recommend the appointment of a clearly identifiable Regional Anti-trafficking Co-ordinator. The Co-ordinator would act as a spokesperson for the work and would co-operate with colleagues in Great Britain, the Republic of Ireland and the European Union.</li> <li>- They recommend the establishment of a forum / steering group with representatives from the various organisations. This would ensure the adoption of a more strategic approach.</li> <li>- They stress the need for education of young people, referring to the "All Change Preventing Trafficking in the UK" report. Many civil groups have produced materials which they feel could be adapted for use in schools and youth groups. The PSNI education officer is also working on lesson plans for secondary pupils.</li> <li>- There is a need for more men's</li> </ul>	
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<p>Soroptomist International Northern Ireland Belfast Trust Social Worker – Pat Knowles</p>	<p>organisations to engage with the issue. The DOJ needs to encourage men to act as spokesmen against Trafficking and become role models. - Feel there is a need for all staff involved in transport, council staff providing local services, Social Services, Border Agency to be trained to look out for evidence of trafficked victims. -DoJ need to bring voluntary and statutory agencies together to agree a Framework for Action and appoint a 'Champion' to co-ordinate action plan.</p>	<p>-Agreed that there should be a move away from assumption that trafficking victims are from outside UK. <u>-Amendment to Asylum and Immigration (Treatment of Claimants, etc) Act 2004.</u> This amendment is welcomed as will fill a legislative gap. DoJ should co-ordinate closely with England, Wales and Scotland to ensure the offence is criminalised throughout the UK. <u>-Extraterritorial Jurisdiction in respect of all trafficking offences.</u> The amendments to both pieces of legislation are welcomed. Other jurisdictions in the UK must implement the same measure to avoid a gap, and close co-operation with foreign authorities will be required. <u>-Additional proposals.</u> QUB believe that the DoJ should take this opportunity to amend other relevant legislation to strengthen criminalisation</p>	<p>None</p>
<p>QUB School of Law Organised Crime Project</p>	<p>None</p>	<p>None</p>	<p>None</p>

<p>QUB School of Law Organised Crime Project</p>	<p>of acts associated with human trafficking, and to reduce demand.</p> <p><u>-Sexual exploitation.</u> QUB feel that the sentences for inciting / causing prostitution for gain (pimping) should be increased from 7 to 14 years. They also query whether a fine of £1000 max is enough of a deterrent for using services of someone who has been trafficked, and recommend that this is increased.</p> <p><u>-Labour exploitation.</u> QUB feel that the system of licensing employers under the Gangmasters Licensing Act 2004 is not adequate. It should be extended to include other industries. They feel that the penalty for acting as a gangmaster should be increased from 10 years.</p> <p>-They feel that a gap in the Immigration, Nationality and Asylum Act 2006 should be addressed to also cover those who legally enter the UK.</p> <p><u>-Non-Criminalisation of Victims.</u> QUB feel that it is imperative that victims who are forced to commit criminal and immigration offences, and offences associated with prostitution are not prosecuted / punished. QUB assert that the inclusion of a provision on non-criminalisation of trafficked victims can further strengthen the protection of victims.</p>		
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<p>South Tyrone Empowerment Programme (STEP)</p>	<p>-STEP welcome the proposed amendments and hope that the Department is committed to implementing the rest of the EU Directive.</p> <p>-They feel that consideration should be given to Article 11 (assistance and support for victims), Article 12(4) (special measures during court proceedings), and Article 15 (protection of child victims).</p> <p>-They feel that in line with the Department of Justice's human rights commitments consideration should also be given to Article 6 (measures to discourage demand), Article 11(1) (protection of private life) and Article 12(1) (assistance to victims).</p>	<p>- Should be a greater emphasis on combating trafficking from a human rights perspective.</p> <p>- Engagement between DOJ and NGO sector must be victim centred. Primary aim should be to prevent trafficking, to protect victims while offering options of safe and sustainable reintegration or return to their home country.</p> <p>- Need to take a more holistic and partnership approach, recognising the importance of mobilising the support of NGOs and the community at large.</p> <p><b>National Referral Mechanism</b></p> <p>- Whilst Migrant Help, Women's Aid and Health and Social Care Trusts provide an excellent service to victims, it is clear that these agencies cannot sustain the needs of all victims and require extensive support.</p> <p>- The NGO sector can provide invaluable assistance in victim care, including provision of shelter accommodation, provision of focused campaigning, education, immediate health care, legal advice and support, social psychological advice, support through integration, English language skills and independent support advocate for trafficking victims.</p> <p><b>Child victims of human trafficking</b></p> <p>- Services for trafficked children require special attention. A co-ordinated, multi agency approach should be established.</p> <p>- As a statutory body, NICC has a specific role relating to children's rights. The NGO sector can assist by introducing the type of</p>	<p>None</p>
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<p>South Tyrone Empowerment Programme (STEP)</p>		<p>protective accommodation necessary for children, providing a Guardian ad Litem, providing specialised foster care, providing specialised trauma support services, and providing education.</p> <p><b><u>Co-operation between PSNI and NGO sector</u></b></p> <ul style="list-style-type: none"> <li>- PSNI needs to provide detailed information on how victims are dealt with in order to ignite a closer working relationship.</li> <li>- Detailed information required around victim identification.</li> <li>-The independence of the NGO sector from 'State Authorities' must be recognised and respected by the PSNI. It is the role of PSNI to gather evidence, and the NGOs to protect the rights of victims and provide essential support, whether they co-operate with the police or not. NGOs cannot 'police' for the state or be its eyes and ears in the community.</li> <li>- Co-operation should be based on certain principles, namely that the NGO sector should assist victims, irrespective of whether they are prepared to testify in criminal proceedings, the provision of specialist assistance services to improve psychological stability and flexibility of witnesses, optimal preparations for repatriation and / or reintegration, an atmosphere of trust should be created by the PSNI so that victims and NGOs are comfortable with co-operating with government agencies, the lead role of the victim in deciding whether they will co-</li> </ul>	
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<p>South Tyrone Empowerment Programme (STEP)</p>	<p>operate with the PSNI or not. - It is imperative that the International Organization of Migration (IOM) be contacted to provide further expert guidance on this issue. It carries out information campaigns in both source and destination countries to educate the public. IOM has also prepared a handbook on direct assistance for victims of trafficking.</p> <p><b>Final remarks</b> - Funding for NGOs is a major issue. More financial flexibility and practical awareness is required. - Imperative that anti-trafficking measures do not restrict access to processes which allow people to claim international protection.</p> <p>None</p>	<p>-Wants our implementation to set the tone that the people of NI will not accept modern day slavery in our province.</p>
<p>Nathan McCaverty</p>	<p>None</p>	<p>None</p>
<p>James Brewster</p>	<p>-Would like to see NI take a stance on the lack of an adequate definition of trafficking, the treatment of victims in criminal proceedings, provision of a guardian or representative for trafficked children, and the creation of a national rapporteur. -Feels strongly that NI should act more incisively than is suggested by following England &amp; Wales. -Urban Angels wholeheartedly endorse the amendments, but would welcome further consideration by the Department with regard to making it more difficult for traffickers to bring their victims in and out of NI. -They feel that a specialist PSNI team</p>	<p>-They recognise that the Department has made progress regarding engagement with organisations. -They feel a conference or summit devoted to raising awareness would be beneficial, bringing together all stakeholders including government, charities, police, customs etc.</p>
<p>Urban Angels</p>	<p>-Urban Angels agree with the equality conclusions drawn by the Department.</p>	<p>None</p>

<p>Urban Angels</p>	<p>should be established to tackle trafficking.</p> <p>-They also believe that the current penalties for involvement in trafficking are not harsh enough to act as a deterrent, and should be reviewed as a matter of urgency.</p> <p>-They believe that targeting the men who use services is the key to ending human trafficking, and think that the penalty for this should be increased.</p> <p>-Welcome the two amendments, and as they are mandatory they have no further comment.</p>	<p>-They would also welcome the opportunity to help the Department push the issue of human trafficking up the political agenda.</p> <p>-Regular communications / meetings between organisations are vital to ensure experiences and knowledge and to present a united front.</p>	
<p>Amnesty International</p>		<p>-DoJ should establish a statutory and non-statutory working group to ensure effective action, co-ordination and sufficient prevention measures in human trafficking in NI. Could mean widening of the I&amp;HT subgroup, or bringing members of I&amp;HT subgroup together with a select, targeted group of NGOs in a separate formal working group. They suggest the former is a more practical solution.</p> <p>-Absence of NGO representation on DoJ strategic groups is concerning, and AI would be happy to sit on a Departmental Statutory and Non-statutory working group. This is a logical follow-on to existing joint working between DoJ and AI.</p> <p>-Effective co-ordination of all relevant actors, including NGOs such as AI, will facilitate innovation and creativity in anti-trafficking programming, and allow expertise developed in different disciplines to inform the work.</p>	<p>AI noted that the response does not include all of AIs observations and recommendations regarding the work of the DoJ and Executive on human trafficking. Would welcome the opportunity to meet the Justice Minister to formalise working arrangements with the Immigration and Human Trafficking subgroup.</p> <p>- recommend that the NI Executive take a lead in ensuring women's rights are upheld and carry out a post-conflict gender analysis which UN Resolution 1325 commits government to do.</p>

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<p>Amnesty International</p>		<p>-AI, as part of the Anti-Trafficking Monitoring Group (ATMG), recommend that the DoJ appoint a Rapporteur to maintain oversight of anti-trafficking efforts.</p> <p>-A clear NI prevention strategy which links to a UK strategy, that all organisations, groups and networks can input to and work towards would alleviate the risk of duplication.</p>	
<p>Hazel Cochrane</p>	<p>None</p>	<p>None</p>	<p>-She believes that the measures in place in England and Wales are not adequate to protect victims.</p> <p>-She states that the definition of trafficking is not adequate, and that the UK government may not prosecute without victim statements, which the directive suggests should be allowed.</p> <p>-She urges the Assembly to consider Lord Morrow's bill, and to take the opportunity to protect vulnerable.</p> <p>-Lord Morrow's bill has been drafted to address the current shortcomings in national law. She would like to highlight the importance of this Bill as a mechanism to implement the EU directive in a way which is both more thorough and more effective than the implementation in E&amp;W.</p>
<p>Hannah Milligan</p>	<p>-Disappointed that NI is following E&amp;W in a minimalist response to implementing the Directive. Although technically compliant, the amendments do not go far enough to solve some of the problem the Directive was designed to address.</p> <p>-Areas which the amendments will not rectify include definitions and treatment of victims in criminal</p>	<p>None</p>	

<p>proceedings.</p> <p>-Two areas in which NI could improve on the E&amp;W approach are in relation to a Guardian or Representative for trafficked children and the implementation of a national rapporteur.</p>	<p>-They welcome the amendments proposed.</p> <p>-However, where there is scope for variation in approach, they are disappointed that the DoJ has chosen to follow E&amp;W with a minimalist response.</p> <p>-UK is technically compliant but does not go far enough to solve some of the problems the Directive was designed to address.</p> <p>-Other concerns are lack of an adequate definition of trafficking, the treatment of victims in criminal proceedings, provision of a guardian or representative for trafficked children, and the creation of a rapporteur.</p>	<p>-Focused campaigning In relation to demand, they propose a high profile campaign, perhaps through men's health awareness or a compelling visual campaign.</p> <p>-Important that localised groups continue to be consulted on the direction of public campaigns, so that communication flows easily from the grass-roots to the 'top'.</p> <p>-DoJ could follow Westminster's example and promote Stop the Traffik's taxi campaign, writing to taxi companies and licensing department asking them to distribute awareness stickers.</p> <p>-Would be beneficial for relevant airport and ferry terminal staff to be trained on the signs of trafficking.</p> <p>-They recommend mainstreaming anti-trafficking prevention and awareness-raising into primary and secondary-level education. They recommend DoJ writes to all secondary schools and recommends they invite one of the groups in the response to deliver regular</p>	<p>None</p>
<p>Joint response – International Justice Mission; Craigavon A.C.T. group; North Down A.C.T. (Bangor); Belfast Abolition Collective; The A21 campaign; Solas Trust; No more Traffik on our Streets</p> <p>The response was also forwarded by:</p> <p>Emma Wood (Belfast Abolition Collective); Pauline Wilson; Helen Cupples (A21); David Midgley; Dónal Kearney; Kar-Li Chan; Sarah Ashley-Cantello; Laura Wylie (Craigavon A.C.T.); Willem &amp; Julie Koorts; Lorna McFarland; Alan Wilson; Cheryl Jenkins; Caroline Ibrahim; Conor Adams; Diane Goodwin; Dave Wiggins – Lurgan YMCA; Angela Surgeonor; Kathleen McCartan; Karen Barkley (Craigavon ACT); Chloe Marcus</p>			

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<p>Joint response – International Justice Mission; Craigavon A.C.T. group; North Down A.C.T. (Bangor); Belfast Abolition Collective; The A21 campaign; Solas Trust; No more Traffik on our Streets</p>	<p>sessions.</p> <ul style="list-style-type: none"> <li>-Investment in training They feel it is essential that all PSNI officers undergo a face-to-face training session on HT in their local context and are able to identify signs of HT.</li> <li>-Local district teams should have a "HT Champion" in place to raise awareness.</li> <li>-Imperative that first responder organisations (Migrant Helo and Women's Aid) are given regular training opportunities.</li> <li>-Effective Communication They believe they are a valuable resource as already working with the public and raising awareness.</li> <li>-They propose the formation of a regular (quarterly) HT Forum involving key awareness groups, NGOs, Statutory bodies, along with representatives from the DoJ, other relevant Gov depts. And PSNI / SOCA. Would be a strategic opportunity for networking, sharing best practicing, and co-ordinating relevant information or trends.</li> <li>-There should be a more visible portal of information (website) available for all aspects of the issue. Should include contact details and info on those dealing with demand, prevention, rescue of victims, aftercare etc.</li> </ul>	<p>As in joint response</p>	<p>None</p>
<p>Gemma Wilson, Belfast Abolition</p>	<p>-Does not wish to be part of a minimalist approach to stopping</p>		

<p>Collective</p>	<p>human trafficking, and wishes to see NI far surpass the efforts of E&amp;W, and take the lead in forming and sustaining a structure that makes NI safe for victims and dangerous for traffickers.</p> <p>-Feels that the legislation is lacking on definitions, treatment of victims in criminal proceedings, and guardian or representative for trafficked children.</p>	<p>None</p>	<p>None</p>
<p>Ad Hoc Working Group on Human Trafficking, QUB Human Rights Centre</p>	<p>-In relation to the amendment to the Asylum and Immigration ..... Act 2004, they recommend the same as what we propose.</p> <p>-Due to dual-nationality issue in NI, they recommend that the legislation is not only applied to nationals, but also to habitual residents (which we are doing).</p> <p>-They recommend extending the scope of Art 76 of Sexual Offences (NI) Order 2008, so as to include NI residents who claim Irish, EU or third State nationality. The same should apply to the Asylum &amp; Immigration..... Act.</p> <p>-The DoJ should extend jurisdiction over human trafficking offences to habitual residents. (we are doing this)</p> <p>-Reference to habitual resident should be made in the following legislation:</p>	<p>None</p>	<p>None</p>

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<p>Ad Hoc Working Group on Human Trafficking, QUB Human Rights Centre</p>	<p>Asylum and Immigration (Treatment of Claimants etc) Act 2004; section 60 of the Sexual Offences Act 2003; and article 76 of the sexual Offences (Northern Ireland) Order 2008.</p> <p>-They feel that legislation should set down factors to be considered with regard to habitual resident.</p> <p>-An amendment should be made to article 76 of the Sexual Offences Order 2008 so that prosecution for offences committed outside the UK can commence, even where a report has not been made by the victim in the place where the offence was committed.</p> <p>-Section 5 of the Asylum..... Act 2004 should be amended to do the same.</p> <p>- The DoJ should extend its jurisdiction beyond UK nationals and habitual residents who commit trafficking offences, to those who would commit trafficking offences against NI nationals or habitual residents.</p> <p>-Believe that the passive personality principle should be extended to ensure that all nationals and habitual residents of NI will be protected should they become victims of trafficking abroad.</p>		
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<p>Northern Ireland Evangelical Alliance</p>	<p>-They propose that a holistic approach, in terms of the 'means' of trafficking (which is not addressed in the Sexual Offences Act 2003), be reflected in a comprehensive human trafficking bill that mirrors the entire EU Directive.</p>	<p>-EA welcome the 2 new trafficking offences, however want to see more innovative and progressive legislation for NI.</p> <p>-They feel that a fine for the new Asylum and Immigration..... offence is neither appropriate or accurate.</p> <p>-Although HT won't be defeated by legislation alone, the principle of prison for convicted traffickers would provide a consistent and firm policy framework.</p>	<p>-Would welcome a close working relationship between Government and civil society organisations, Government, PSNI, legal system, NGOs and the public.</p> <p>-Would like to work together on: policy making initiatives to tackle 'supply' and 'demand'; information and awareness campaigns; research and education; training; monitoring and evaluating the effectiveness of measures; and prioritising victim care and restoration.</p> <p>-A forum between NGOs, DoJ and PSNI Propose a forum consisting of DoJ officials, PSNI representatives, NGO representatives and members of the All Party Group. Will allow information to pass horizontally and vertically between organisations. Suggest that the forum meets quarterly to broadly discuss issues of raising awareness, research and training, legislation, prosecutions, demand and victims. Steering groups could be developed in local areas seminal to that piloted by Craigavon A.C.T.</p> <p>-A Christian network</p>	<p><u>-Tackling demand for sex trafficking</u> There is a clear need to specifically tackle demand for sex-trafficking in NI. Believe that a shift in public policy and public perception is required.</p> <p>-Propose that those found guilty of using a trafficked person for forced sex should face prison and be put on the sex offenders register.</p>
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<p>Northern Ireland Evangelical Alliance</p>		<p>EA have established a network of Christian individuals from across various NGOs. The idea is to share prayer, information and resources. Would recommend regular engagement with them and the wider faith community.</p>	
<p>Hugh Marcus</p>	<p>-No comment on our proposed amendments but lists areas of concern as: lack of an adequate definition of trafficking; the treatment of victims in criminal proceedings; provision of a guardian or representative for trafficked children; and the creation of a national rapporteur.</p> <p>-States that Lord Morrow's proposed bill will address the current shortcomings.</p>	<p>-None</p>	<p>-Feels that this is a "golden" chance for NI to lead the way in its response to the crime of HT by embracing a robust implementation of the Directive instead of what is proposed.</p>
<p>Hugh Marcus</p>	<p>-Law centre welcomes the Department's intention to implement its obligations under the Directive in this way.</p> <p>-Law centre would urge the Department to review how NI law and policy fully complies with the Directive in light of the UN recommendations.</p>	<p>- NI would benefit from an all-inclusive and multi-disciplinary, holistic approach to human trafficking. This would ensure coordination between the different statutory and non-statutory agencies and would assist the DOJ to more efficiently and effectively realise its goals.</p> <p>- Critical to the success of such an approach would be the DOJs role to coordinate its work with the other NI Executive departments in relation to all matters pertaining to human trafficking including prevention and the treatment of victims.</p> <p>- The Law Centre suggests the model provided by the Racial Equality Forum's Thematic Sub-Group on Immigration. The</p>	<p>-Law centre notes that guidance on HT for all prosecutors in NI from the PPS is still outstanding. They urge the DoJ to produce this guidance as a matter of urgency. (not for DoJ to produce).</p>
<p>Law Centre NI</p>			

<p>Law Centre NI</p>		<p>sub-group has the aim of facilitating a partnership approach at a strategic level, and joint working between government departments, statutory bodies, voluntary and community organisations and other agencies. It meets at regular intervals and provides an arena for exchange of information and the identification of best practice, and helps to avoid duplication of effort and to share resources.</p> <ul style="list-style-type: none"> <li>- Law Centre are concerned to ensure that the voice of victims is represented in any mechanism for future engagement with the development of policy and services.</li> <li>- They would welcome the establishment of a single point of contact for those working in NI on trafficking matters: an independent Northern Ireland anti-trafficking "commissioner", to oversee the delivery of policy and services addressing prevention, protection and prosecution.</li> <li>- A group would assist the DOJ to design a policy framework for NI. The aims might include: research and campaigns to inform the public; development of appropriate education tools; establishment of information sharing protocols across devolved and non-devolved government departments; strategies for the implementation of a victim centred approach; coordination and evaluation of trafficking prevention and awareness raising; strategies for improving border and cross border cooperation; strategies for the prevention of child trafficking; protocols and good practice in relation to voluntary repatriation; systems to</li> </ul>	
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	<p>enable victims to access compensation; and documentation in different languages to provide to all trafficked persons in NI.</p> <ul style="list-style-type: none"><li>- A multi-agency group could assist the DOJ to coordinate and align their efforts, working towards an agreed basic standard in relation to language / interpretation support, counselling, health, accommodation, legal advice and assistance.</li><li>- A group would have the benefit of enhancing knowledge and skills among all those working on human trafficking matters by eg. ensuring that examples of good practice are shared, evaluated and implemented across sectors, ensuring sharing of relevant research, and promoting collaboration in the provision of effective training for relevant professionals and frontline staff.</li><li>- The DOJ should develop an effective NI-wide training strategy for identifying victims and appropriate responses.</li><li>- Establishing protocols between statutory and non-statutory bodies and NGOs would assist in avoiding overlap and duplication and ensure an effective service for victims.</li><li>- The involvement of NGOs and other practitioners would assist the Department to ensure that the DOJ's response to human trafficking focuses on victims' rights, rather than immigration issues. It could also assist the Department to contribute to the development of regional and UK wide policy in relation to human trafficking legislation, policy and practice to ensure that we have a policy and practice response which is tailored</li></ul>	
	<p>Law Centre NI</p>	

<p>Northern Ireland Commissioner for Children and Young People</p>	<p>-NICCY is supportive of developments which will ensure that certain acts which are currently not punishable under the criminal law will in future be treated as such.</p> <p>-NICCY welcome the legislative amendments, which clearly represent a progressive step in terms of UK policy regarding the prevention and combating of trafficking.</p> <p>-They highlight that the obligation to comply with the Directive does not preclude the UK from taking additional measures which would further progress the legislative and policy framework.</p> <p>-They highlight the need for DoJ to monitor and evaluate the impact of the legislative changes.</p>	<p>to Northern Ireland.</p> <p>-NICCY welcomes the Department's proactive approach.</p> <p>-NICCY would highlight that they engage with the Minister for biannual meetings to discuss matters regarding the risk of trafficking of children, both from NI and subject to immigration control.</p> <p>-NICCY highlight the importance of ensuring that both the Department and PSNI consult with NICCY at an early stage in the development of policies and guidance relevant to the issue of child trafficking or to children subject to immigration control.</p>	<p>-Recommend a distinction be made between children and young people who are subject to immigration control and at risk of, or who have been, trafficked, and the trafficking of children and young people from NI.</p> <p>-Feel the need for a more joined up approach between UKBA, DHSSPS, HSC Board and HSC Trusts.</p> <p>-Informed that NICCY are planning to commission a piece of research regarding children subject to immigration control in NI. Engagement with PSNI/DoJ may be sought by researchers.</p>
<p>Northern Ireland Commissioner for Children and Young People Phil Hodge</p>	<p>-Expresses some concern with the way that the Assembly has responded to the implementation of the Directive.</p> <p>-Does not agree with copying the decisions of E&amp;W and their minimalist implementation of the Directive.</p> <p>-Care of minors is lacking, largely due to a failure to recognise the ease with which children can be taken from care</p>	<p>None</p>	<p>-Believes that NI is ahead of the UK in terms of the degree and extent of the crime being carried out here.</p>

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<p>Dan Boucher, CARE in Northern Ireland</p>	<p>back to the abusive environments they were taken from.</p> <ul style="list-style-type: none"> <li>-It is morally reprehensible for NI to be content with following England's leadership.</li> <li>-CARE welcome the 2 amendments proposed.</li> <li>-They are disappointed, however, that the detail of the amendments is not included in the consultation document.</li> <li>-They would argue that the requirements of Article 2(1) &amp; 2(3) mean that the Asylum and Immigration Act 2004 should be amended to specifically include forced begging and exploitation of criminal activities.</li> </ul>	<p>None</p>	<ul style="list-style-type: none"> <li>-Proposed amendments are a welcome step but there remain things which must be done. They hope that the DoJ, Executive and NI Assembly make the most of this opportunity to address to address gaps in the provision and seize the opportunity to lead the way in the UK.</li> <li>-The Human Trafficking and Exploitation Bill sponsored by Lord Morrow has been drafted to address these shortcomings. It is a possible solution which would bring NI in line with the Directive.</li> </ul>
<p>Dan Boucher, CARE in Northern Ireland</p>	<ul style="list-style-type: none"> <li>-They raise a practical point of implementation of extraterritorial jurisdiction: how will it be decided where a UK citizen has committed a trafficking offence abroad, whether the offence will be prosecuted in the UK?</li> <li>-Feel that there is a pressing need for other legal changes to be made if Northern Ireland is to make the most of its devolved powers and make itself compliant with the Directive by the deadline.</li> <li>-Feel that the UK IDMG on HT is inadequate in its capacity as a national</li> </ul>		

<p>Dungannon &amp; South Tyrone Borough Council</p>	<p>rapporteur. -The Council welcomes any commitment to seek to combat human trafficking, and to protect it's victims.</p>	<p>-The Council would welcome greater engagement and linkage, and sees the need for a range of measures from greater enforcement, legislation and awareness to the public through partnership. -The Council has identified this as a concern under its Policing and Community Safety Plan, and is keen to work in partnership to raise awareness, and to be part of any proposed solutions.</p>	
<p>Craigavon Trades Council</p>	<p>- Disappointed that the Department has chosen to follow England &amp; Wales with a minimalist response. - Concerns include the lack of an adequate definition of trafficking, the treatment of victims in criminal proceedings, provision of a guardian or representative for trafficked children, and the creation of an independent national rapporteur.</p>	<p><b>Training</b> - Vital that first responders are given adequate resources in line with their increasing workload. - Concerned that (they are aware that) only 1% of PSNI have opted into the online training resource on human trafficking, and that there is little awareness of human trafficking in PSNI neighbourhood teams in smaller communities. - Feel that all officers should undergo face to face training sessions on human trafficking in their local context, perhaps with local district teams having a human trafficking champion.</p> <p><b>Focused campaigning</b> <b>Demand</b> - They propose a more streamlined, coordinated and high profile campaign directed at the demand side ie men's health awareness or campaigns similar to drink driving and speeding TV campaigns. - Recommend that by the end of 2012 there is specific research commissioned on the</p>	

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<p>Craigavon Trades Council</p>	<p>demand that fuels sexual exploitation, exploitative labour and encourages such criminality.</p> <ul style="list-style-type: none"> <li>-Wish to ensure that any campaign against human trafficking focuses on forced labour and organ harvesting, as well as the sex trade.</li> </ul> <p><b>Community activism / awareness</b></p> <ul style="list-style-type: none"> <li>- Feel that it is important that Trade Unions are consulted on the direction of public campaigns.</li> <li>- Feel it is important that public awareness are targeted in key border areas, ie the North / South transit route.</li> <li>- Would be beneficial for relevant airport and ferry terminal staff to be trained on the signs of trafficking, and all ports should display information on staying safe from trafficking.</li> </ul> <p><b>Prevention</b></p> <ul style="list-style-type: none"> <li>- Imperative that education begins early, should be investment in bringing this message to young people. Could include mainstreaming anti-trafficking prevention and awareness into primary and secondary level education.</li> <li>- Recommend that the Department write to all secondary schools and recommend they invite one of the groups in this response to deliver regular sessions that equip students to stay safe from trafficking.</li> </ul> <p><b>Effective communication</b></p> <ul style="list-style-type: none"> <li>- Believe that Trade Unions are a valuable resource. Motions committing to working to</li> </ul>	
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<p>Craigavon Trades Council</p>		<p>combat human trafficking were passed at NIC ICTU and NIPSA conferences.                  - Propose the formation of regular (Quarterly) human trafficking forum involving key awareness groups, NGOs, statutory bodies, along with reps from DOJ, other Gov depts. And PSNI / SOCA.                  - Urge the DOJ to consider this proposal and contact them for further discussion.                  - As well as more streamlined campaigning, there should be a more visible portal of information available. Should include contact details of those dealing with demand, prevention, rescue of victims etc.                  - Feel that this would warrant a specific website or page.</p>	
<p>Northern Ireland Policing Board</p>	<p>- The Board welcomes the proposed amendments to legislation outlined in the consultation document.</p>	<p>- Emphasis should be on victims and how they can best be supported.                  - Should be a clear definition of the role of NGOs and a framework developed with adequate resources.                  - A community partnership should be</p>	<p>- In early 2012, the Policing Board's Minority Ethnic Reference group established a Human Trafficking sub group, the first meeting was held on 1 February 2012.                  - The consensus from the meeting</p>

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<p>Northern Ireland Policing Board</p>		<p>established to complement the work of Migrant Help and Women's Aid.</p> <ul style="list-style-type: none"> <li>- Named agencies / organisations from the voluntary and community sector should be given some responsibility for identifying potential victims (first responders), and provided with specialist training.</li> <li>- Consider how best to utilise support from within voluntary / community sector.</li> <li>- Victims of human trafficking should be classed as 'vulnerable adults'.</li> <li>- The DOJ should conduct an audit of the community and voluntary sector to establish current levels of activity.</li> <li>- Consideration should be given to establishing a specific forum with community / voluntary sector representation.</li> <li>- The Board's Human trafficking Sub Group would be happy to assist with this and share their knowledge and expertise in this area.</li> <li>- The Community Partnership should be used as a tool to provide support to victims.</li> <li>- Consideration should be given to developing a 'responsible person' role to reassure vulnerable adults and children and act as advocates or interpreters. May be recruited from community / voluntary sector and should be provided with appropriate training and support.</li> <li>- Consideration should be given to adopting existing and relevant criteria for the role of the Responsible Adult.</li> <li>- The previously mentioned framework should ensure that they work in support of the PSNI, Migrant Help, and Women's Aid.</li> <li>- The role should include awareness raising</li> </ul>	<p>(which included PSNI, The Licensed Gangmasters Association, UKBA, Migrant Help and Women's Aid) was that a mechanism should be developed to harness resources from within the community / voluntary sector, and that the OCTF Immigration and Human Trafficking sub group should take the lead.</p> <ul style="list-style-type: none"> <li>-The Board hosted a follow up meeting with PSNI and DOJ, where it was agreed that a Human Trafficking Community Partnership would be an important way forward, and the Department of Justice should include this in their imminent consultation on human trafficking legislation.</li> </ul>
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<p>Northern Ireland Policing Board</p>		<p>both nationally and locally with existing networks and the newly established Police and Community Safety Partnerships.                  - A training programme should be developed and delivered to those engaged with victims.                  - Special consideration should be given to children who have been trafficked or suffer as a result of their carers being trafficked.                  - There should be specific foster care arrangements in place if possible to accommodate individual needs in respect of culture and language, this should be in protected accommodation as far as possible.                  - Consideration should be given to providing a Guardian ad Litem for each child to look after their interests.</p>	
<p>Northern Ireland Catholic Council on Social Affairs</p>	<p>- NICCOSA welcomes the two offences</p>	<p>- NICCOSA acknowledges the active public engagement of the Minister on human trafficking.                  - The DOJ can make a vital contribution to the work by collating and disseminating information from different sources. The report from the Anti-Human trafficking Unit in the Republic of Ireland, is a good example of such a resource (<i>Annual Report of Trafficking in Human Beings in Ireland for 2011</i>).                  - Education has a key role to play. The DOJ should explore ways in which it might partner with non-governmental organisations in the delivery of appropriate educational programmes.                  - Dialogue with the faith based sector is particularly important. Churches and faith communities have a particular responsibility to combat demand for human trafficking by actively promoting core values, such as</p>	

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	<p>respect for life and human dignity.</p> <ul style="list-style-type: none"> <li>- The DOJ might consider using the Community Faith Forum (operated by DSD but open to all other Gov depts.) to update Churches and faith communities on its work in this area.</li> <li>- Need to maintain a dialogue on human trafficking on an all-island basis. The Minister of Justice in RoI is preparing to review legislation in this area, and there is considerable pressure for criminalising the purchase of sexual services. The potential impact for Northern Ireland should be carefully monitored.</li> <li>- NICCOSA would welcome the opportunity to meet with representatives of the DOJ to discuss further.</li> </ul>		
<p>Northern Ireland Catholic Council on Social Affairs</p>			
<p>Ben Connolly Antrim ACT</p>	<ul style="list-style-type: none"> <li>- Focused campaigning</li> <li>- Investment in Training</li> <li>- Effective Communication</li> </ul>	<p>- None</p>	
<p>Northern Ireland Council for Ethnic Minorities</p>	<ul style="list-style-type: none"> <li>- Engagement with non-governmental organisations in particular ethnic minority led organisations will help to ensure that policy decisions are well informed and communicated safely.</li> <li>- Following the consultation, the Department should develop a statement of intention for improving and building upon Department – Community relationships in the fight against human trafficking.</li> <li>- The DOJ should mainstream human rights and equality into its anti-trafficking policies and continue to engage with NGOs and others in line with international best practice.</li> <li>- The proposed New Racial Equality Strategy</li> </ul>		

<p>Northern Ireland Council for Ethnic Minorities</p>	<p>(OFMDFM) should have a specific dedicated section on human trafficking and the role the strategy can play in fostering engagement of BME communities regarding Government policy.</p> <ul style="list-style-type: none"> <li>- All strategies that tackle social exclusion should be considered in order to create a joined up approach, issues of violence against BME women should be viewed in a broad context, and a mechanism should be established to monitor the specific impact of law and policy on people of multiple identities.</li> <li>- The DOJ should undertake a mapping exercise to have a clear idea of which NGOs are working on human trafficking, and to what extent the organisation focuses on these issues.</li> <li>- The DOJ and UKBA should work with NGO, by means of a consultative forum, to identify whether there is capacity in Northern Ireland for an existing NGO to become an official first responder organisation, which will act as a central focal point working solely on human trafficking.</li> <li>- During the mapping exercise of NGOs and others working against human trafficking, the DOJ should seek to ascertain how those stakeholders would be comfortable in engaging in policy development. This would allow some NGOs to share experiences where they do not have capacity to develop an accompanying policy but such information sharing would be crucial to the development of policy at departmental level.</li> <li>- The DOJ should send regular updates to</li> </ul>	
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<p>Northern Ireland Council for Ethnic Minorities</p>		<p>stakeholders and hold information sessions on new policy developments in this area. The Dept should also publish new developments on their website and consider using social media as a means of alerting stakeholders to key changes.</p> <ul style="list-style-type: none"> <li>- NICEM urges the Dept to build on its engagement with the All Party Group within the NI Assembly as this provides the opportunity for legislators, Government Departments, NGOs and others to share information and experiences. More specifically, these groups can be used as a platform to inform and develop Departmental policy on human trafficking.</li> <li>- NICEM recommends that the Dept consult with NGOs and others in developing awareness raising campaigns, as NGOs are very experienced in this area. To that end, the Dept can ensure that funds will be used in the most effective possible way.</li> </ul>	
<p>Northern Ireland Human Rights Commission</p>	<ul style="list-style-type: none"> <li>- Note the changes required to meet some of the conditions of the EU Directive.</li> <li>- The change to ensure recognition of internal trafficking and extra-territorial jurisdiction are positive steps.</li> <li>- Relevant agencies must not take a passive role once the changes enter force, but must be active in uncovering, investigating and prosecuting instances of internal trafficking and the involvement of UK nationals in trafficking overseas.</li> </ul>		

<p>British Red Cross</p>	<p>- They welcome the proactive approach taken by law enforcement to tackle trafficking</p>	<p>- Believe that the voluntary sector has a key role to play in helping authorities to deal with human trafficking in NI. - The Red Cross supports the principle of using the voluntary sector to bridge the gap between statutory authorities and vulnerable migrants who are in need of assistance. - The Red Cross would welcome the opportunity to make further representations on these issues and to play a continued role in future discussions on matters affecting victims of trafficking and other vulnerable migrants.</p>	
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FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1562/2012

**FROM: BARBARA MCATAMNEY**

**DATE: 05 OCTOBER 2012**

**TO: CHRISTINE DARRAH**

**Summary**

**Business Area:** Justice Policy.

**Issue:** To brief the Justice Committee on a proposed amendment to the Criminal Justice Bill to make additional legislative provision in relation to the use of registered intermediaries.

**Restrictions:** None.

**Action Required:** Committee members are asked to note the content of this paper and indicate if they would be content with the Department bringing forward legislative change as set out in this paper.

**Officials Attending:** Not applicable.

**BACKGROUND**

1. Members were advised in a briefing paper on 6 September 2012 about the Department's plans for the introduction of Registered Intermediaries Schemes, with pilot schemes to be established in the first instance in the Crown Court sitting in Belfast. This paper advises the Committee of the



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existing legislative provisions governing intermediaries and the need to bring forward a minor amendment through the Criminal Justice Bill.

2. As Members will be aware from the previous briefing, an intermediary is a professional person who ensures that complete, coherent and accurate communication takes place at the investigation and trial stages. At present, it is difficult to assess the uptake and associated costs of providing this form of assistance. Given this, the schemes will initially be in a discrete court tier/geographical area (the Crown Court sitting in Belfast), so as to allow the Department to form a clearer view of likely uptake and associated costs across Northern Ireland and in the other court tiers.
3. A pilot exercise is being used to test the scheme, in terms of effectiveness and financial viability. An evaluation of the scheme in the Crown Court sitting in Belfast will inform plans for further roll out across court tiers and other geographic locations.

### **KEY ISSUES**

4. At present, Article 17 of the Criminal Evidence (Northern Ireland) Order 1999 (the 1999 Order) provides for a number of special measures (including the use of intermediaries) to assist vulnerable witnesses give their best possible evidence in criminal proceedings. Section 12 of the Justice Act (Northern Ireland) 2011 (the 2011 Act) also provides for the examination of the accused through an intermediary.
5. Article 6 of the 1999 Order provides that, before a court introduces a new special measure (such as the use of intermediaries) a statutory notice must be issued to a specified court directing that it provides the relevant special measure. The Article also provides for that notice to be withdrawn, which would cease the use of the special measure. Once commenced, this would

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enable the pilot scheme for Registered Intermediaries for vulnerable witnesses to be started and also suspended, should funding become an issue or the evaluation of the pilot scheme concludes that some amendment to its operation is required.

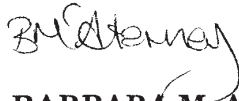
6. It is normally the case that the full range of options (to continue, adjust or suspend a scheme) would be available following the evaluation of any pilot exercise. This is presently the case in relation to intermediaries for witnesses but not defendants.
7. While the issue and withdrawal of notices was provided for in relation to the examination of vulnerable witnesses, making a similar provision in respect of vulnerable defendants (through section 12 of the 2011 Act) was overlooked. The Department is proposing to address this omission by making an amendment to the Criminal Justice Bill to include a clause on statutory notices in respect of section 12.
8. The Department wishes to stress that it remains fully committed to the introduction, and roll out, of Registered Intermediaries Schemes but wishes to provide consistency in terms of the range of options available following evaluation of the pilot. The Department considers it unlikely that the power to suspend the scheme would need to be exercised. However, it is thought prudent to have such a safeguard in place. Members will of course be updated on the outcome of the pilot, and their views taken on the future roll out of the scheme, before final decisions are taken.
9. Members would wish to note that Executive support for an amendment to the Criminal Justice Bill would be sought. Members would be provided with the relevant clause prior to it being tabled in the Assembly.

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**NEXT STEPS**

10. The Committee is invited to note the content of this paper and indicate if they would be content with the Department bringing forward legislative change as set out in this paper. This would ensure legislative consistency between the position of vulnerable witnesses and defendants.



**BARBARA McATAMNEY  
DALO**

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1618/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Room 242 Parliament Buildings  
Stormont  
Ballymiscaw  
Belfast  
BT4 3XX

10 October 2012

Dear Christine

**CRIMINAL JUSTICE BILL: COMPARISON OF RETENTION REGIMES**

At the Justice Committee meeting on Thursday 27 September, the Chair asked for a paper comparing the retention arrangements proposed for Northern Ireland with those in place in Scotland, and those in England and Wales. This is attached.

Please note that it is the Minister's intention, subject to Executive agreement, to bring forward an amendment to the Bill permitting limited retention in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. That penalty provision was commenced in Northern Ireland on 6 June this year and should be reflected in the retention framework for this jurisdiction. Section 18D of the Criminal Procedure (Scotland) Act 1995 and section 63L of the Police and Criminal Evidence Act 1984 (as inserted by section 8 of the Protection of Freedoms Act 2012) make corresponding provision. Further policy

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detail on this amendment, in addition to further proposed amendments to be brought forward by the Department will be provided in due course for Committee consideration.

A handwritten signature in black ink, appearing to read 'B. McAtamney'.

**BARBARA McATAMNEY**  
**DALO**

**ENC**

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref COR/873/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Room 242, Parliament Buildings  
Ballymiscaw  
Stormont  
BELFAST  
BT4 3XX

10 October 2012

Dear Christine,

**LORD MORROW MLA'S PRIVATE MEMBER'S BILL ON HUMAN  
TRAFFICKING**

On 1 August Lord Morrow published for public consultation a draft Private Member's Bill entitled Human Trafficking and Exploitation (Further Provisions and Support for Victims)(Northern Ireland) Bill. The consultation is due to end on 18 October.

The Justice Minister has written to Lord Morrow and met with him on 9 October to discuss the draft Bill. A copy of the Minister's letter to Lord Morrow is attached for the Committee's information.

**BARBARA McATAMNEY  
DALO**

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90528121  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Your ref:  
Our ref: COR/873/2012

Lord Morrow MLA  
Parliament Buildings  
Stormont  
Belfast  
BT4 3XX

4 October 2012

*Dee Mawrie*

I wrote to you on 21 June about your proposal for a Private Member's Bill on Human Trafficking and Exploitation which you had shared with me. I explained that I had sought views from OCTF partners. Your updated draft Bill, which was published on 21 August and which you helpfully sent to me, was also referred to OCTF partners. It was considered by the Immigration and Human Trafficking Subgroup at its meeting in September.

Some aspects of the Bill relate to responsibilities which fall to the Department of Health, Social Services and Public Safety. That Department has provided information on those aspects and this is set out in the Appendices attached. I understand, however, that the Health Minister will be responding to you separately.

You and I are meeting on 9 October to discuss the Bill and I thought that it would be useful for you to have an assessment of the clauses in the Bill and my views on these in advance of the meeting. This is set out in Appendices A and B.

FROM THE OFFICE OF THE JUSTICE MINISTER



As you will know, I very much welcome the numerous discussions and debates that have taken place both within the Assembly and elsewhere on the need to tackle this horrendous crime and how to do so. I have no doubt that we all want the same end – a hostile environment for organised criminals engaged in this vile crime, including prosecutions, recovery of assets etc. Equally we all want to see necessary support for those who are exploited by the criminals. My concern as Minister of Justice is to ensure that appropriate steps and measures are in place to achieve those ends and I have considered your draft Bill in that context. I am keen to take on board any new suggestions or measures which I believe will assist.

Finally by way of background, and as I said in the debate in the Assembly on 3 July, my primary objectives and those of OCTF partners are to support victims, bring the traffickers before the courts and raise awareness of the issue. I also said that my priority in terms of legislation is to make provision for the amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to ensure that the law in Northern Ireland complies with the criminal aspects of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and that we meet the deadline for its implementation in April 2013.

A number of the clauses in your draft Bill relate to Articles in the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims. Work on analysing compliance with the Directive is ongoing and is being taken forward by my Department in conjunction with the OCTF Immigration and Human Trafficking Subgroup and others, including the Department of Health, Social Services and Public Safety. There is some flexibility in how the aims of the Directive can be achieved and we are looking at the best ways of doing this. Officials are also liaising closely with the Home Office on their approach. As a precautionary measure, I have recently agreed to Northern Ireland's inclusion in a Designation Order under the European Communities Act 1972 in relation to the EU Directive which will allow any



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Northern Ireland Department to put in place any secondary legislation required to ensure compliance.

In addition to aspects of your Bill a number of proposals for statutory provisions concerning trafficking were made by respoondees to the consultation which my Department undertook on the creation of the new human trafficking offences and on engagement with non-governmental organisations (NGOs). The results of this consultation will be published shortly.

Your draft Bill and the proposals from the consultation were considered by the IHT Subgroup which noted that there is a considerable risk in being overly prescriptive and enshrining certain aspects in legislation as this can –

- Limit flexibility in relation to dealing with individual cases;
- Make it more difficult to respond quickly to changes in criminal behaviour; and
- Provide criminals with a means to work around the legislation.

Appendix A sets out the analysis of your Bill and my conclusions on those clauses that fall to my Department. As you will see, some of the provisions in your Bill are already covered by existing legislation, others are providing for definitions of, for example, trafficking and victims and I believe that these would in fact hamper the efforts against trafficking by limiting flexibility. Yet others are not matters which I think we should seek to put in legislation; they are administrative in nature.

There are a number, however, where I believe more consideration is necessary and I have tasked officials to look at these further. These are set out below.

I am not minded to amend the existing legislation, as proposed by Clause 4 of your Bill on paying for the sexual services of a prostitute. I am not convinced that it would be enforceable or effective as a deterrent, and I am concerned that it risks driving

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prostitution underground and puts vulnerable women at greater risk of exploitation and harm. Linking trafficking and prostitution in this way also carries the risk of distracting the attention (and potentially, resources) from one issue to the other.

Nevertheless, I have tasked my officials to look at the existing offence to see if any changes are required. I will also consider what further steps can be taken with regard to prostitution, as I review the Strategy for Managing Women Offenders.

In relation to clause 8, and the requirements for assistance and support for victims, my Department funds the Support Service for Potential Adult Victims of Human Trafficking during the reflection and recovery period. Information on the support provided under the contract is set out in detail at Appendix B. Assistance and support is provided on a non-statutory basis. I am considering whether further steps are necessary in relation to victim support to ensure compliance with Article 11 of the EU Directive, including whether there is a requirement for secondary legislation. I have been advised that support beyond the recovery and reflection period is a complex issue and is a matter for Health and Social Care Trusts.

I have also looked closely at clause 9 in relation to civil legal services for victims of human trafficking. The legal aid regime in Northern Ireland is different from that in England and Wales and, therefore, the position there is not readily applicable here. Civil legal aid for both advice and representation remains generally available in NI for most legal matters (including any relating to human trafficking). The DOJ funds the Law Centre to provide advice and assistance on immigration matters including to victims of human trafficking, and that contract was extended for a further year up to the 31 March 2013 and is currently under review.

My Department is examining whether there are any gaps that need to be filled in relation to compliance with the EU Directive in respect of legal aid and will consider other changes to legal aid as part of the Access to Justice Programme work on legal aid reform. Under this, the Department plans to present consultation proposals on

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civil legal aid to the Justice Committee in November and intends to include in those proposals appropriate references to human trafficking. If changes are then required, we would be seeking to legislate before the end of 2013.

Clause 13 would require the Department to publish an annual strategy on human trafficking. There is no requirement in the EU Directive for an annual strategy. The IHT Subgroup is drawing up an action plan on human trafficking and I will give further consideration to the need for a Northern Ireland Strategy on Human Trafficking to complement the United Kingdom Strategy, but I do not consider that this needs to be on a statutory basis.

I would like to take this opportunity to set out the range of initiatives that have been or are being taken forward by the various organisations represented on the Subgroup. While more needs to be done, I hope this demonstrates that, in addition to steps connected with the EU Directive, we were, and are, pursuing initiatives with the aims of assisting victims, raising awareness and prosecuting offenders.

Work is being taken forward on three fronts by my Department, the Organised Crime Task Force's Immigration and Human Trafficking Subgroup and others. These are – prevention, prosecution and protection.

On prevention, there is -

- Training for Public Prosecution Service, Health and Social Care staff, PSNI and others. 2800 PSNI officers and staff have successfully completed an online training package, to assist in the recognition of signs of trafficking;
- Awareness of human trafficking was also highlighted by the Blue Blindfold campaign which was re-launched last year. This reinforced the message that human trafficking happens across Northern Ireland; sought

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- to make people aware of the signs to look out for; and encouraged members of the public to report their suspicions to Crimestoppers;
- The OCTF also developed a multi-lingual “Visitor or Victim?” leaflet and poster targeted at potential victims. These are displayed at key places where victims might be, including ports, main railway stations, health centres and doctors’ surgeries;
  - Joint guidance on the working arrangements for the welfare and protection of adult victims of human trafficking in Northern Ireland for frontline PSNI officers and Health and Social Care staff will be published very shortly;
  - My Department will be developing a multi-lingual leaflet for victims, in conjunction with Amnesty International;
  - Work is also being taken forward on a project to change mindsets and drive down demand for organised crime.

The work ongoing on prosecution includes -

- Proactive investigations to tackle the crime gangs involved in human trafficking by the PSNI – liaising as relevant with An Garda Siochana;
- There have been two convictions for human trafficking recently in separate cases, and others are pending;
- The Criminal Justice Bill contains provisions on new human trafficking offences to ensure that Northern Ireland complies with both the mandatory and discretionary elements of Articles 10.1 and 10.2 of the EU Directive on human trafficking;
- Sentencing guidance was set out in April 2012 in the case of *R v Pis* which set out factors to be considered in sentencing. This outlines that anyone convicted of a trafficking offence, other than in exceptional circumstances, can expect a custodial sentence;
- The Public Prosecution Service launched a public consultation on its policy for Prosecuting Cases of Human Trafficking on 8 June 2012 and

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this will be published before the end of the year. The Policy explains the role of the PPS and the way in which it deals with cases involving human trafficking and the wide range of other crimes associated with it;

- I plan to bring forward proposals to add trafficking for non sexual purposes to the schedule of offences referable to the Court of Appeal on the grounds of unduly lenient sentences. (Trafficking for sexual exploitation is already covered.)

A range of work on protection has also taken place and is ongoing. This is set out below.

- My Department introduced and funds a package of support for all adult victims of human trafficking recovered in Northern Ireland. This amounted to some £145,000 in 2011/12. It is delivered by Migrant Help and their delivery partner Women's Aid. It is delivered by Migrant Help and their delivery partner Women's Aid. Details of the support available are set out in Appendix B. Once a positive Conclusive Decision is made about the status of a potential victim by the Competent Authority, the victim may be eligible to apply for relevant benefits such as social security benefits and housing assistance. Assistance will continue to be provided under the DOJ contract until other support arrangements are in place;
- Children who are trafficked are automatically considered to be "children in need" under the Children (NI) Order 1995 and the responsibility for provision of care and support to these children, including access to health and social care, falls to HSC Trusts;
- Guidance on the working arrangements for the welfare and protection of child victims, developed by PSNI and DHSSPS, was published in February 2011. It sets out information for practitioners, agencies, and public facing service providers about human trafficking and its indicators and on the arrangements in place for child victims;

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- I am launching Guidance on Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking on 9 October. This guidance is directed at the PSNI and Health and Social Care Trusts and sets out the actions to be taken by them in relation to adults where trafficking is suspected or alleged;
- Proposals on engagement with NGOs are being drawn up and will be announced at an event for NGOs on Tackling Trafficking Together on Anti-Trafficking/Anti-Slavery Day on 18 October;

The first report from the Inter Departmental Ministerial Group on Human Trafficking (IDMG) is due to be published shortly. The report sets out an assessment of human trafficking in the United Kingdom by the IDMG.

You may also find the following update useful. During 2011, 23 potential adult victims of human trafficking in Northern Ireland were referred to the National Referral Mechanism (NRM). This is, as you know, the framework for identifying victims of human trafficking and ensuring they receive the appropriate protection and support. Nine minors were also referred to the NRM during 2011. Seven potential victims of HT have been recovered in NI since 1 April 2012 – one was a minor at the time but is now an adult.

I look forward to our discussion on 9 October. I am copying this letter to the Justice Committee and the All Party Group on Human Trafficking.

*Yours  
David*

**DAVID FORD MLA**  
Minister of Justice

APPENDIX A

Human Trafficking and Exploitation (Further Provisions and Support for Victims)(Northern Ireland) Bill

Clause	Comments	Conclusions
PART 1		
1- human trafficking offences	<p>Article 2 of the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims defines exploitation and covers the definitions set out in clause 1(2) and 1(3). We are compliant with the requirements in Article 2.</p>	<p>Further legislative provision is not considered necessary as we are already compliant with the Directive.</p>
2 – Aggravating factors	<p>The Magistrates’ Courts sentencing guidelines set out general principles of sentencing which detail general aggravating and mitigating factors. In addition, the Crown Court guidance issued by Judge Burgess in 2012 following the R v Pls case, set out aggravating factors in relation to offences for human trafficking for sexual exploitation. These guidelines were applied in the Ron Chen case in July 2012.</p> <p>The Sentencing Guidelines for Northern Ireland, which are available on the website of the Judicial Studies Board for Northern Ireland (“JSBN”), confirm aggravating factors of general application. One such specific factor is: “The offender abused a position of power, a position of trust or a domestic relationship.” We have the legal precedent that an abuse of such positions of trust must be severely treated.</p> <p>DHSSPS has advised that it is doubtful whether the definition of a ‘vulnerable adult’ used in this Clause is suitable for this purpose. The definition used is that contained in Article 3 of the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007. This definition was amended by paragraph 2 of Schedule 7 to the Protection of Freedoms Act 2012 (to be commenced). The definition is now wholly expressed in terms of the services/activities offered to an adult (someone over age 18), which may declare him/her vulnerable. For example an adult in receipt of health or personal care services is considered vulnerable when receiving those services. That definition does not extend to victims of human trafficking.</p> <p>The guidance on Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking to be published jointly by DOJ and DHSSPS in October notes at paragraph 1.6 that adult victims of human trafficking are considered to be vulnerable adults in the context of Safeguarding Vulnerable Adults - Regional</p>	<p>Aggravating factors have already been set out in Sentencing Guidelines and go further than the provisions in clause 2. The provisions set out in this clause are not considered necessary.</p>

Clause	Comments	Conclusions
<p><b>3 – Amendments to the Asylum &amp; Immigration (Treatment of Claimants, etc.) Act 2004</b></p>	<p>Adult Protection Policy and Procedural Guidance (Safeguarding Vulnerable Adults)<sup>1</sup> and the associated Protocol for Joint Investigation of Alleged and Suspected Cases of Abuse of Vulnerable Adults (Protocol for Joint Investigation). Safeguarding Vulnerable Adults defines a vulnerable adult as:</p> <p>“a person aged 18 years or over who is, or may be, in need of community care services or is resident in a continuing care facility by reason of mental or other disability, age or illness or who is, or may be, unable to take care of him or herself or unable to protect him or herself against significant harm or exploitation”.</p> <p>The case of Siliadin v France in 2005 defines ‘enforced control’ and also dealt with inducements and we are compliant with this.</p> <p>The Sentencing Guidelines for Northern Ireland, which are available on the website of the Judicial Studies Board for Northern Ireland (“JSBN”), confirm aggravating factors of general application. One such specific factor is: “The offender abused a position of power, a position of trust or a domestic relationship.” We have the legal precedent that an abuse of such positions of trust must be severely treated.</p> <p>Forced begging constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.</p>	<p>Further legislative provision as proposed in clause 3 is not considered necessary as these matters are already provided for in existing legislation and/or guidelines.</p>
<p><b>4 – Paying for sexual services of a prostitute</b></p> <p>There is a word missing in clause 4 (2) in relation to the proposed amendment to section 64A of the Sexual Offences (Northern Ireland) Order 2008</p>	<p>The Women’s Offending Behaviour in NI Strategy includes an action on supporting women involved in prostitution. A Research Paper was published in January 2011 and was followed up by a conference (October 2011) and action plan. The Department is about to review its Women’s Strategy and will consider further action on prostitution as part of that strategy. In doing so, it will continue to monitor developments elsewhere, including the public consultation on the future of prostitution legislation in the Republic of Ireland and the progress of a private member’s proposal for a bill to make it an offence to pay for sex in Scotland.</p>	<p>There are no plans to amend the existing legislation, as proposed by Clause 4. This proposed reform is not required by and falls outside the scope of the EU Directive. It is a concern that linking trafficking and prostitution in this way carries the risk of distracting the attention (and potentially, resources) of one issue from the other.</p> <p>However, the Minister has tasked officials to</p>

<sup>1</sup> Safeguarding Vulnerable Adults can be accessed through: [http://www.hscboard.hscni.net/publications/LegacyBoards/index.htm#P-1\\_0](http://www.hscboard.hscni.net/publications/LegacyBoards/index.htm#P-1_0)



Clause	Comments	Conclusions
<p><b>4 – Paying for sexual services of a prostitute</b></p>	<p>The Department notes that this clause proposes a fundamental change as to how prostitution is addressed and criminalises the act of purchase of a sexual service, making it a "simple offence". This could result in legislation which is difficult to enforce. What is not defined in the draft bill is what a "sexual service" is. For some this may be intercourse, for others this may be discussion in the form of telephone sex lines. This will shift the focus from a moral debate into a policing enforcement arena. Furthermore, any approach should consider the potential impact on the Republic of Ireland and displacement of associated activity</p> <p>The Public Prosecution Service and PSNI have noted that the suggested amendment effectively criminalises prostitution – not only does it make it illegal to pay for the services of a prostitute but in such cases it will also result in the prostitute involved (if not subjected to force) committing potential offences of aiding and abetting the principal party or conspiring with the principal party.</p>	<p>look at the existing offence to see if any changes are required and will also consider what further steps can be taken with regard to prostitution, in the review of the Strategy for Managing Women Offenders.</p>
<p><b>5 – Requirements for investigation or prosecution</b></p>	<p>The Department has been advised by the Public Prosecution Service (PPS) that it will apply the Test for Prosecution in all cases referred to it by police regardless of whether the victim reports the offence, makes a statement or with draws a statement. The Evidential and Public Interest Tests will be applied and if both are passed prosecution will be initiated or continued.</p> <p>The issue of prosecutorial decisions in cases involving trafficked victims who have committed an offence as a result of being trafficked is addressed in the draft PPS Policy on Prosecuting Cases of Human Trafficking which has recently been the subject of public consultation and which the PPS intends to publish before the end of the year. The Policy explains that PPS cannot provide blanket immunity from prosecution for victims of human trafficking. Every case must be considered on its own merit and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor mitigating against prosecution.</p> <p>In order to enable the prosecutor to consider such factors they must be provided with the information from police or other sources who suspect that the person may be a victim of trafficking. Further this is only relevant where the criminality is as a direct consequence of the trafficking situation. There must also be consideration of the extent</p>	<p><b>Legislative provision as set out in this clause is not considered necessary.</b></p> <p>The statutory obligations placed on the PPS by the Justice (Northern Ireland) Act 2002 require public prosecutors to review each case received from the investigator in accordance with the Code for Prosecutors to determine whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should continue.</p> <p>The PSNI are required under section 32 of the Police Act (Northern Ireland) 2000 to investigate if they suspect that a criminal offence has occurred.</p>

Clause	Comments	Conclusions
<p><b>5 – Requirements for investigation or prosecution</b></p>	<p>to which the victim was compelled to undertake the unlawful activity. Prosecutors will take into consideration all relevant information provided by police and other agencies, including any decision arising from the National Referral Mechanism when deciding where the public interest lies in relation to prosecution.</p> <p>The Policy also includes reference to Court of Appeal cases from England and Wales, namely R v O [2008] EWCA Crim 2835 which highlights the need for prosecutors and defence practitioners to take all reasonable steps to identify victims of trafficking and to be proactive in causing enquiries to be made and the Case of R v LM [2010] EWCA 2327 in which the court stated that prosecutors must consider the public interest in prosecution when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled to commit.</p> <p>The PSNI are required under section 32 of the Police Act (Northern Ireland) 2000 to investigate if they suspect that a criminal offence has occurred, irrespective of whether a report has been received or a victim / potential victim is cooperating with the investigation</p>	
<p><b>6 – Requirements for resources for investigation or prosecution</b></p>	<p>The PPS has advised the Department that prosecutors and investigating officers require to be properly trained to ensure that cases involving human trafficking are properly investigated and effectively prosecuted and to ensure that they are aware of the specific issues involved prosecuting such cases, including the requirements of victims. Training has been provided to all prosecutors on Human Trafficking, internally and with input from UKBA. It is anticipated that further training will be provided when the PPS Policy on Prosecuting cases of Human Trafficking, referred to above, is issued.</p> <p>The PPS will ensure that any external barrister instructed in a case involving human trafficking is experienced and skilled in the conduct of such cases and efforts will be made, wherever possible, for the same barrister to deal with the case at all stages.</p> <p>The responsibility for the investigation of Human Trafficking rests with a number of Law Enforcement Agencies within Northern Ireland. Each Agency has existing processes in place to ensure they can effectively investigate particular crime types and work in partnership across Northern Ireland in order to maximise their impact. In addition, training in this area has been developed and implemented and remains under constant review given changing criminal</p>	<p>It is not considered that this needs to be on a statutory basis. Training and investigative tools are already available.</p> <p>The Organised Crime Task Force's (OCTF) Immigration and Human Trafficking Subgroup is to undertake a mapping exercise in conjunction with other stakeholders and NGOs on human trafficking related training.</p>

Clause	Comments	Conclusions
<p><b>6 – Requirements for resources for investigation or prosecution</b></p>	<p>methodology. Within PSNI, proactive investigations into trafficking are conducted by Organised Crime Branch, who additionally have oversight over all PSNI Trafficking Investigations. All investigative strategies can be utilised as and when necessary based on operational decisions.</p> <p>The PSNI has recently assisted in the development and introduction of an online training package, targeted at frontline officers and staff to assist in the recognition of signs of trafficking. Over 2800 PSNI officers and staff have successfully completed the training. In addition, PSNI's Organised Crime Branch has introduced and delivered bespoke training to a number of detectives to enhance their investigative skills and ensure that officers know how to engage voluntary and statutory partners in assisting rescued victims.</p> <p>The Judicial Studies Board (JSB) is responsible for judicial training. The board runs study programmes and training workshops for the judiciary and issues written material to all judges. The JSB held a training event on THB for the judiciary in October 2010, and a copy of the training materials is given to all judges appointed since then.</p>	
<p><b>PART 2</b></p>		
<p><b>7 – Victim of trafficking in human beings</b></p>	<p>The accepted definition of human trafficking is already set out in United Nations Palermo Protocol. This describes trafficking as:</p> <p>“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat of use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.... Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”</p> <p>Human trafficking and ‘victim’ are also defined in Article 4 of the European Convention.</p> <p>The consent of an adult victim of human trafficking to the intended exploitation becomes irrelevant where any of the means, e.g. force or other forms of coercion or deception, described in the Palermo Protocol are present.</p>	<p>This is not considered necessary on a legislative basis. The definition of human trafficking set out in United Nations Palermo Protocol is accepted in NI. Article 4 of the Council of Europe Convention on Action against trafficking in Human Beings defines human trafficking and defines a victim as any natural person who is subject to trafficking in human beings as defined in Article 4.</p> <p>The National Referral Mechanism (NRM) is the victim identification process.</p> <p>The provisions in clauses 7(1) to 7(3) are already covered by the NRM and the references in clause 7(4) are not required.</p>

Clause	Comments	Conclusions
<p><b>7 – Victim of trafficking in human beings</b></p>	<p>The procedures for identifying victims of human trafficking are set out in the National Referral Mechanism. The NRM is a framework for identifying victims and ensuring they receive the appropriate protection and support. To be referred to the NRM, potential victims of trafficking must first be referred to one of the UK's two Competent Authorities (CAs), the UKHTC or the UKBA by a First Responder. There are a number of First Responders in Northern Ireland including the PSNI, NSPCC, Barnados, the Salvation Army, Migrant Help, Health and Social Care Trusts, NSPCC, UK Border Agency, UK Border Force and the Gangmasters Licensing Authority. Once a referral has been made, trained experts in the CA will assess the case and make a decision on whether an individual is a victim of trafficking.</p>	
<p><b>8 – Requirements for assistance and support</b></p>	<p>DOI CSU funds the Support Service for Potential Adult Victims of Human Trafficking which provides for a minimum 45 day recovery and reflection period. Support is tailored to individual's needs to take account of safety and protection and includes access to medical care, counselling and other support services.</p> <p>DHSSPS has advised that access to health and social care for adult victims of human trafficking, after the 45 day recovery and reflection period, is complex. Factors such as the person's assessed needs, whether or not they have access to public funds and their immigration status need to be considered.</p> <p>For recovered adult victims beyond the recovery and reflection period, the guidance "Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking" which was developed jointly by DOI and DHSSPS and is due for publication in October 2012 states at paragraph 7.18 that "Where trafficked victims are able to exercise Treaty rights or have been given discretionary leave to remain, they will normally be able to apply for relevant social security benefits and housing assistance and will be entitled to access health and social care."</p> <p>DHSSPS has advised that where a child is recovered as part of a family group and the child's parent or other responsible adult with whom the child has been living has been a victim of trafficking, the family's immediate needs will be met under the Children Order provisions relating to support for children in need and their families. The relevant guidance is set out in Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking.</p> <p>DHSSPS has pointed out that the Bill accompanying Notes indicate responsibilities at Clause 8 are obligations on the Department of Justice. However, HSCTs/ HSCB/DHSSPS have 'obligations' in this</p>	<p>There is already provision, funded by the DOI, for support for victims during the recovery and reflection period. The range of support provided is set out in the paper at Appendix B. The Minister is considering whether further steps are necessary in relation to victim support to ensure compliance with Article 11 of the EU Directive, including whether there is a requirement for secondary legislation.</p> <p>For recovered adult victims beyond the recovery and reflection period, the arrangements are set out in the guidance on "Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking", which will be published shortly</p> <p>Note – As the Bill does not define 'social recovery' we cannot comment on this.</p> <p>It will be necessary for DOI to re-tender the contract to ensure provision of the support service from February 2014. In developing the tender document consideration will be given to the extent of the current provision and will take into account the experience of the service providers, the EU Directive, this Bill and engagement with NGOs.</p> <p>DHSSPS has advised that the proposal in the clause, that assistance and support should be provided for 3 months after criminal</p>

Clause	Comments	Conclusions
<p><b>8 – Requirements for assistance and support</b></p>	<p>regard – ie; <b>duties</b> under the Children (Northern Ireland) Order 1995 such as -</p> <p>Re Clause 8 (1) (b) - see Article 66 of Children (Northern Ireland) Order 1995 (Authority's Duty to Investigate where child is suffering / likely to suffer significant harm)</p> <p>Re Clause 8 (1) (c) - Need to consider that the family of a child identified as a victim of human trafficking may potentially have been party to that child's trafficking</p> <p>These are legal duties imposed by the letter of the primary legislation and therefore compulsory upon the 'authority' to whom they are directed.</p> <p>DHSSPS has advised that recovered child victims of trafficking are deemed to be "children in need" under the Children (NI) Order 1995 and therefore the responsibility for provision of care and support to these children, including access to health and social care, falls to HSC Trusts. The Trust is required to undertake a full assessment on such children's' needs. A Trust should always consider making an application for a Legal Order to establish "parental responsibility" in respect of the child and ensure that appropriate measures are put in place to safeguard and promote his / her welfare. When a child becomes "looked after" by a HSC Trust, that child is deemed to be "ordinarily resident" in the jurisdiction. When a Trust makes application for a legal order in respect of a child/young person, a social worker will be allocated case responsibility and, upon the Trust's application, Guardian ad Litem will be appointed by the Court to represent the child's young person's interests and a legal representative is appointed by the Guardian ad Litem to represent his/her interests.</p>	<p>proceedings are completed, could impact on a number of pieces of existing legislation and the proposal will also have resource implications, which will need to be considered.</p>
<p><b>9 – Civil legal services for victims of trafficking</b></p>	<p>The legal aid regime in Northern Ireland is different from that in England and Wales and, therefore, the position there is not readily applicable here. Civil legal aid for both advice and representation remains generally available in NI for most legal matters (including any relating to human trafficking). The DOJ funds the Law Centre to provide advice and assistance on immigration matters including to victims of human trafficking, and that contract was extended for a further year up to the 31 March 2013 and is currently under review..</p>	<p>The Department is examining whether there are any gaps that need to be filled in relation to compliance with the EU Directive and will consider other changes to legal aid as part of the Access Justice Programme work on legal aid reform. Under this, the DOJ is planning to publish consultation papers on civil legal aid representation and civil legal aid remuneration in November and would plan to include in those papers appropriate references to human trafficking. If changes</p>

Clause	Comments	Conclusions
<p><b>10 – Compensation for victims of trafficking</b></p> <p><b>10 – Compensation for victims of trafficking</b></p>	<p>The Criminal Injuries Compensation Scheme 2009 provides for compensating victims of crime. It includes compensation for crimes that may be committed as a result of human trafficking. The Scheme meets the requirements of Article 17. Assistance in relation to claiming compensation is currently available to applicants through Victim Support NI (<a href="http://www.victimsupportni.co.uk/what-we-do/compensation">http://www.victimsupportni.co.uk/what-we-do/compensation</a>).</p> <p>The PPS has noted that Compensation Orders may also be awarded by the court upon conviction</p>	<p>are then required, we would be seeking to legislate before the end of 2013.</p> <p>The Department considers that the Criminal Injuries Compensation Scheme in Northern Ireland provides an effective scheme for persons who have suffered physical and/or mental trauma as a result of crimes of violence committed against them. This includes compensation for crimes that may be committed as a result of human trafficking and at least one victim of human trafficking in Northern Ireland has been successful in claiming compensation for personal injury. Victim Support Northern Ireland is specifically funded by the Department to assist victims, free of charge, with the compensation process.</p> <p>Victims have existing rights under the Criminal Injury Compensation regime. It is important to go back to the exact requirement in Article 17 of the EU Directive; this is that Member States shall ensure that victims have access to existing compensation schemes. The requirement to set out by order by affirmative resolution how a trafficking victim makes an application to the Compensation Agency is considered unnecessary.</p> <p>The Immigration and Human Trafficking Subgroup has agreed that information on compensation should be included in the multi-lingual Victims' Leaflet which the Department will be developing with Amnesty International.</p>
<p><b>11- Legal advocate for child</b></p>	<p>DHSSPS has pointed to the requirements of the Children (Northern Ireland) Order 1995 and in particular Articles 66 – Authority's Duty to Investigate and 60 – appointment of a Guardian Ad Litem by the Court.</p> <p>DHSSPS has advised that any young person who is trafficked or</p>	<p>It is noted that according to the Accompanying Notes, this clause uses the term 'legal advocate' to discriminate it from a legal guardian and advocate as understood within UK law, whilst covering the role referred to as 'guardian' by international</p>

Clause	Comments	Conclusions
	<p>suspected of being trafficked shall have a named allocated social worker appointed with case management responsibility and, upon application by the Trust to the Court to secure a Legal Order in respect of the child, a Guardian ad Litem will be appointed by the Court. The Guardian ad Litem (GAL) will subsequently appoint a legal representative to act on behalf of the child; each of these professionals may in circumstances act as a representative for the child. In the absence of a GAL, Court can appoint solicitor for child.</p> <p>The UKBA has advised that existing statutory safeguarding provisions providing support and protection are already in place for children if appropriate, and introducing a further system of guardianship would simply add an unnecessary bureaucracy to the process.</p>	<p>instruments. The notes refer to the following Articles in the EU Directive none of which use the term 'legal advocate'</p> <p>Article 13 - General provisions on assistance, support and protection measures for child victims of trafficking in human beings.</p> <p>Article 14 - Assistance and support to child victims.</p> <p>Article 15 - Protection of child victims of trafficking in human beings in criminal investigations and proceedings.</p> <p>Article 16 - Assistance, support and protection for unaccompanied child victims of trafficking in human beings.</p>
<p><b>12 – Amendments to the Criminal Evidence (Northern Ireland) Order 1999</b></p> <p>NOTE – There may be a mistake in the Bill in clause 12(c) – the reference should presumably be to Article 9 and not section 21.</p> <p>The word 'of' is superfluous in the wording in brackets at 12 (e) starting 'child complainants etc.'</p> <p><b>12 – Amendments to the Criminal Evidence (Northern Ireland) Order 1999</b></p> <p>The reference at clause 12(e)(b) to paragraph (4)(b)(a) should read "in paragraph (4)(a)".</p>	<p>In a consultation in 2010 on special measures carried out by the Department on possible amendments to Article 5 of the 1999 Order to provide that victims of offences involving firearms and offensive weapons would be automatically eligible for special measures consideration, the following arguments against the proposal were made and the Department believes that they are equally valid in not accepting clause 12 (a):</p> <ol style="list-style-type: none"> <li>1) automatic eligibility may infringe on the defendant's right to a fair trial;</li> <li>2) as a principle, witnesses should give evidence in the court room where the defendant is entitled to be present to see and hear the evidence against them and that such a principle should only be departed from in the particular circumstances of the current legislative scheme;</li> <li>3) the court currently has discretion to apply eligibility;</li> <li>4) eligibility for special measures should be based upon an individual assessment of each case; and</li> <li>5) it is not appropriate to introduce a hierarchy of victims and offences.</li> </ol> <p>It should be noted that "section" 4 victims can of course still be considered for special measures assistance as is the case at present.</p> <p>In order to benefit from special measures assistance, on receipt of an application, the court first of all has to be satisfied that the witness is either a vulnerable or an intimidated witness. If it is satisfied that the witness is either vulnerable or intimidated, then the court has to</p>	<p>Further legislative provision is not considered desirable or necessary. Article 5(4) of the 1999 Order provides that complainants of sexual offences, who are giving evidence, are automatically considered to be intimidated witnesses. The background to this automatic eligibility provision is that, when giving evidence in sexual offences, complainants often have to talk about very personal and intimate details. It is, of course, for the Court to decide if special measures will be provided.</p> <p>Victims of labour and other exploitation offences set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 ("section" 4 victims) can be considered for special measures assistance under the current legislation. Such victims would most likely be considered eligible for special measures assistance in any case under the provisions in Article 5(1) (i.e. the quality of their evidence is likely to be diminished by reason of fear or distress when testifying).</p>

Clause	Comments	Conclusions
	<p>decide if special measures would improve the quality of their evidence. The third and final step is for the court to decide which of the eight special measures (or a combination of them) would help the witness most.</p> <p>Article 5 of the Criminal Evidence (NI) Order 1999 describes who may be considered to be an intimidated witness (the quality of the witness's evidence is likely to be diminished by reason of fear or distress when testifying). Article 5(4) provides that complainants of sexual offences, who are giving evidence, are automatically considered to be intimidated witnesses (i.e. they don't have to prove to the court that they satisfy the first step of the application process). The background to this automatic eligibility provision is that, when giving evidence in sexual offences, complainants often have to talk about very personal and intimate details.</p> <p>The amendments to Article 9(1)(b) and Article 10 (1)(b) proposed by clauses (b) and (c) are not needed as these Articles were omitted by Article 8 (Special measures directions for child witnesses) of the Justice Act (Northern Ireland) 2011, which was commenced on 1 January 2012.</p> <p>In relation to children, DHSSPS has advised that the Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse Northern Ireland (September 2004) – which is currently being reviewed, specifies the arrangements for joint investigation and provides guidance to ensure investigative actions meet the requirements listed at (3).</p> <p>Achieving Best Evidence (ABE) In Criminal Proceedings Guidance On Interviewing Victims And Witnesses, The Use Of Special Measures and The Provision Of Pre-Trial Therapy (January 2012) gives further detailed guidance in relation to the conduct of investigative interviews and the assistances that can be made available to victims/witnesses throughout the process.</p>	<p>The Guidance on Achieving Best Evidence in Criminal Proceedings sets out the general principles of planning and conducting interviews with vulnerable and intimidated victims or witnesses, including children.</p>
<p><b>PART 4</b> <b>13 – Prevention</b></p>	<p>This clause refers to the requirements in Article 18 of the EU Directive.</p>	<p>The Department notes that there is no requirement in the Directive for an annual strategy. The JHT Subgroup is drawing up an action plan on human trafficking and the Department is giving further consideration to the need for a strategy but does not consider</p>



Clause	Comments	Conclusions
<p><b>PART 5</b> <b>14 – General Interpretation</b></p>	<p><b>DHSSPS has advised that the definition of a child proposed is compatible with the Children (NI) Order 1995 and the presumption in relation to children or persons believed to be children is in line with the Working Arrangements for the Welfare and Safeguarding of Child Victims of Human Trafficking issued by DHSSPS and PSNI in February 2011. In ‘placing’ age disputed children, HSC Trusts will need to have regard to their safety and the safety of other vulnerable children.</b></p> <p><b>The PPS has advised the Department that the PPS draft Policy on Prosecuting cases of Human Trafficking highlights that the Trafficking Convention provides that a child is any person under eighteen years of age. The Policy also highlights that The United Nations Convention on the Rights of the Child states, “when the age of the victim is uncertain and there are reasons to believe that the victim is or may be a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age”.</b></p> <p><b>The judgment, handed down by Judge Burnton in the case of B v London Borough of Merton [2003] EWHCA 1689 has been superseded; R(F2) v London Borough of Croydon (2008). This judgment clarifies that it is for the Court to determine the age of victims; social services should always carry out a ‘Merton Compliant Age Assessment’ to assist the court in its deliberations but ultimately the resolution of an ‘age-disputed’ case will be determined by the Court.</b></p>	<p>A definition of ‘child’ is provided in the Children’s (NI) Order 1995, DHSSPS guidance and in the draft PPS guidance which will be published shortly.</p>
<p><b>15 – Orders</b></p>	<p>States that Orders made under the Act should be subject to Affirmative resolution.</p> <p>Note – according to the accompanying note Clause 15 states that orders under this Bill will be made by negative resolution</p>	<p>that this needs to be on a statutory basis. .</p>
<p><b>16 – Short title, commencement &amp; extent.</b></p>		

## APPENDIX B

The Department of Justice currently has a contract with Migrant Help (MH) together with their delivery partner Women's Aid, to provide accommodation and a range of support services for potential adult victims of human trafficking during the period of recovery and reflection.

The support available through the DOJ contract includes:

- (i) safe accommodation;
- (ii) one-to-one support by experienced support workers;
- (iii) help with living/travel costs;
- (iv) help to access healthcare;
- (v) signposting to immigration advice;
- (vi) signposting to independent legal advice and advice on eligibility for compensation;
- (vii) help to access counselling or other therapeutic services; and
- (viii) interpreter/translation services.

In Northern Ireland, all potential adult victims of trafficking (PVHTs) are able to access support and assistance while the trafficking claim is being considered and investigated. Effectively the commencement of support and assistance starts from the day of contact with the law enforcement agency and the service provider will provide support from the outset.

Access to a secure safe environment is vital for PVHT. A 24 hour referral line is available and processes are in place to ensure that victims can access appropriate support as soon as practicable. The Support Service often assists planned law enforcement operations when intelligence indicates PVHT may be identified. This ensures support is offered at the earliest opportunity.

No co-operation is required for the initial 45 day recovery and reflection period when support is provided. While full engagement with the Criminal Justice System leading to prosecutions is the preferred outcome, victims may choose to engage with Law Enforcement agencies at a variety of levels from full evidential cooperation, intelligence giving cooperation or no engagement at all. The victim must sign the agreement that their details can be shared and be referred to the United Kingdom Human Trafficking Centre (UKHTC).

All support and guidance is offered on an informed and consensual basis. Victims are empowered and encouraged to make informed decisions for themselves based on

information about their rights and entitlements. A victim may also choose to accept some elements of the support for example; they may not require accommodation if this is something they already have access to but may still require advice and guidance. A victim centred approach is provided by the Support Service.

Victims are given structured support from Government and other organisations (i.e. the National Referral Mechanism); this may include being given time to consider the options available without fear of being removed from the country, finding a safe place to live, someone to talk to, legal advice and other assistance (the Reflection and Recovery period).

Within the Conditions of Contract for the Support Services for Adult PVHTs, the Service Requirements refer to: 'signposting to immigration and independent legal advice should be available to victims..'. The service provider also has a 'Protocol with the PSNI in respect of victim support services in relation to HT' in which one of the responsibilities of Migrant Help is 'to provide advice and support in the process of regularising immigration status and obtaining relevant documents'. All frontline staff in MH are accredited to OISC<sup>2</sup> level 1; this qualification enables frontline staff to give initial advice on immigration matters; should more detailed information be required, queries are referred to higher qualified areas.

The DOJ funds the Law Centre to provide advice and assistance on immigration matters including to victims of human trafficking, and that contract is being extended for a further year (cost approx £200k).

Every PVHT is treated as an individual and their needs are assessed on an individual basis. The victim is treated with respect and in a non judgemental manner. When an assessment indicates particular or high level needs, the Support Service will work with specialist agencies to address those needs. This multi-agency approach ensures the most appropriate care and services are provided to the PVHT.

Paragraph 7.18 of the guidance on "Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking" due to be published shortly, states that "Where trafficked victims are able to exercise Treaty rights or have been given discretionary leave to remain, they will normally be able to apply for relevant social security benefits and housing assistance and will be entitled to access health and social care."

In respect of child victims, DHSSPS has advised that all trafficked children and those suspected of being trafficked are deemed to be children in need. The Trust is required to undertake a full assessment on such children's' needs. A Trust should always consider making an application for a Legal Order to establish "parental responsibility" in respect of the child and ensure that appropriate measures are put in place to safeguard and promote his / her welfare. When a child becomes "looked after" by a HSC Trust, that child is deemed to be "ordinarily resident" in the jurisdiction. When a Trust makes application for a legal order in respect of a child/young person, a social worker will be allocated case responsibility and, upon the Trust's application, Guardian ad Litem will be appointed by the Court to

<sup>2</sup> OISC – Office of the Immigration Services Commissioner

represent the child's young person's interests and a legal representative is appointed by the Guardian ad Litem to represent his/her interests.

FROM THE OFFICE OF THE JUSTICE MINISTER



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[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90528121  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Your ref:  
Our ref: SUB/1744/2012

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
BT4 3XX

| November 2012

Dear Christine,

**CRIMINAL JUSTICE BILL**

Thank you for your letters of 12 and 17 October seeking comments from the Department on issues raised by organisations in written submissions and in oral evidence on those parts of the Bill dealing with the biometric retention framework and human trafficking. Responses on both these aspects are attached in the form requested: comments in respect of the Biometric retention Framework are attached at Appendix A; comments in respect of Human Trafficking are attached at Appendix B and Appendix C; there is also a paper covering proposed amendments relating to sex offenders at Appendix D; and the requested list of recordable offences is attached at Appendix E.

I should like to take this opportunity to make the Committee aware that, in addition to the other amendments identified in the attached papers, the Minister now intends to include in the Bill an amendment to the Criminal Justice (Children)(Northern

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Ireland) Order 1998 to rectify a possible incompatibility with the European Convention on Human Rights concerning licence arrangements relating to the release of young offenders convicted of certain serious crimes. Further details will be provided shortly. All such amendments are, of course, subject to the agreement of the Executive.

*D. Greaney*  
R BARBARA McATAMNEY  
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**Appendix A****JCP\12\399: Retention of Fingerprints, DNA Profiles etc  
(Clause 7 and Schedules 2 and 3)****Summary**

<b>Business Area:</b>	Policing Policy and Strategy Division, Safer Communities.
<b>Issue:</b>	The Department's assessment of the Retention of Fingerprints, DNA Profiles etc (Clause 7 and Schedules 2 and 3).
<b>Restrictions:</b>	None.
<b>Action Required:</b>	For information for the evidence session on 8 November.
<b>Officials Attending:</b>	Ian Kerr, Police Powers and Custody Branch Gary Dodds, Police Powers and Custody Branch

The Committee sought the Department's comments on points raised by various organisations in written and oral evidence. This is set out in the table attached, as requested.

The Department is conscious that a number of the respondents were critical of the framework in seeking to retain DNA profiles and fingerprints from juveniles. The Department would point out that such retention is aimed at the prevention and detection of crime. It cannot be equated with a criminal record; it will never be disclosed; and it does not cut across the Department's considerable efforts to divert young people away from the criminal justice system or to deal with them in an appropriate manner should they come within it.

In particular, implementation of the Youth Justice Review will provide a still sharper focus on a joined-up approach to early intervention and prevention; a greater emphasis on informal resolution and diversion; more

effective engagement and communication with young people to improve decision-making and outcomes; custody arrangements that comply with international norms and standards; and affirmation that the best interests of children who encounter the justice system will be a primary consideration in how they are treated.

However, whilst offending for most young people is a one-off aberration, it is a fact of life that some do not desist and continue to offend with escalating frequency and severity. As it is not possible to say with any certainty into which group a young offender might fall, the Department is satisfied that it is necessary, proportionate and reasonable to retain biometric material to the extent permitted in the framework for the detection of crime, the protection of the public and, ultimately, in the best interests of victims (who are often also children) and offenders alike.

In addition, the Committee sought information on the following points.

### **Prescribed circumstances**

In response to points made by the Northern Ireland Examiner of Statutory Rules, the prescribed circumstances will now be set out on the face of the bill. They will relate exclusively to circumstances in which an individual has been arrested in connection with a serious violent or sexual offence, but where there is insufficient evidence to bring charges. The precise framing of the provisions will be a matter for Legislative Counsel but, based on the drafting of the Protection of Freedoms Act 2012, we would expect something along the following lines—

( ) The Chief Constable may make an application under this subsection if the Chief Constable considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—



- (a) under the age of 18,
- (b) a vulnerable adult, or
- (c) associated with the person to whom the material relates.

( ) The Chief Constable may make an application under this subsection if the Chief Constable considers that—

- (a) the material is not material to which [the previous] subsection relates, but
- (b) grounds exist for the retention of the material in the interests of public protection.

In this context, a ‘vulnerable adult’ means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise; and ‘associated with the person’ will be defined by reference to Article 3 of the Family Homes and Domestic Violence (NI) Order 1998 – essentially relatives, spouses, civil partners, etc.

### **Biometric Commissioner/courts**

Where the police are of the view that the prescribed circumstances described above apply, the Bill provides for them to seek the approval of a Biometric Commissioner to retain the material. However, we undertook to explore with the police and the courts the possibility of the proposed role of the Biometric Commissioner being undertaken by the courts.

Without experience of operating the new framework, the police have been unable to estimate the likely volume of cases once it is up and running, but anticipate that numbers could be considerable at start-up, as they process the historical abuse inquiries, along with other cases. Without a

clear idea of the likely volume and the associated resource implications, the courts are understandably reluctant to take the business on.

If the courts were to accept the task, whilst reporting restrictions could be imposed, hearings would be public and a requirement on an applicant to make representations in court with the risk that public opinion would reach a view on their innocence might be seen to undermine the willingness of some to make such representations. However, it would remain the case that were the Commissioner to find against an applicant they would be entitled to seek judicial review of any such decision.

In the circumstances, we have concluded that the Commissioner remains the preferred option for the time being and propose to proceed on that basis, but with an undertaking to keep the matter under review. The drafting implications of this and the previous point are that we will probably incorporate provision along the lines of section 63G of the Police and Criminal Evidence Act 1984, as set out in section 3 of the Protection of Freedoms Act 2012.

### **Retention of material until the conclusion of an investigation**

New Article 63C provides for material to be retained until the conclusion of an investigation or any associated proceedings. It was pointed out that an individual might be ruled out of an investigation but the investigation continue potentially for years – a point also picked up by GeneWatch UK in its written submission to the Committee.

The policy intention in relation to this provision is that the material should not be retained once it has been established that it is of no evidential value to the investigation. However, as mentioned in oral evidence, the Attorney General asked that the original drafting be revised to permit the retention of material if it were likely to be probative against,

for example, a co-defendant, rather than solely against the individual from whom it was taken. With that qualification, we have agreed to explore the point with the draftsman when instructing on other amendments.

## **Other amendments**

### Penalty Notices

As previously mentioned in correspondence with the Committee, we propose to introduce provision permitting limited retention (2 years) in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011. That provision was commenced on 6 June this year and should be reflected in the retention framework. Section 18D of the Criminal Procedure (Scotland) Act 1995 and section 63L of the Police and Criminal Evidence Act 1984 (as inserted by section 8 of the Protection of Freedoms Act 2012) make corresponding provision.

### Diversionsary Youth Conferences

It is also the intention to bring completion of a diversionary youth conference within the framework on the same basis as a caution. Both these disposals require acceptance of guilt on the part of the offender and so are treated as convictions for the purposes of the retention framework.

### Drafting error

Finally, there is an incorrect reference in paragraph 6 of Schedule 3: '18(8)(b)' should read '18(8)(c)'. This will be corrected.

**Retention of Fingerprints, DNA Profiles etc (Clause 7 and Schedules 2 and 3)**

<b>CLAUSE/ SCHEDULE/ SUBJECT AREA</b>	<b>ORGANISATION</b>	<b>COMMENT</b>	<b>DEPARTMENT'S RESPONSE</b>
<b>GENERAL COMMENTS</b>	<b>Committee on the Administration of Justice (CAJ)</b>	<p>CAJ states within its submission that the proposals on retention of DNA are, as it understands, designed to bring NI law in line with that proposed for England and Wales which, in turn, is based on the Scottish situation. In CAJ's response to the 2009 Home Office consultation, CAJ recommended that the Scottish precedent be followed rather than the much more extensive retention powers then proposed. In that context CAJ indicates that it does not have fundamental reservations about the proposed powers.</p>	<p>The Department welcomes CAJ's comments.</p>
	<b>Disability Action</b>	<p>Disability Action welcomes the commitment in the Bill that DNA and fingerprints will only be used for the purposes related to the prevention or detection of crime.</p>	<p>The Department welcomes Disability Action's comments.</p>
	<b>MindWise</b>	<p>MindWise states that as a mental health</p>	<p>The Department welcomes MindWise's</p>

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	<p>charity it supports the rights of individuals and opposes discrimination, and sees nothing in the provisions of Schedule 2 of alarm. MindWise goes on to state that the legislator has, in its view, endeavoured to draw a balance between investigative necessity and the rights of the un-convicted person.</p>	<p>comments.</p>
<p><b>Northern Ireland Policing Board (NIPB)</b></p>	<p>The NIPB states that the legislative framework put forward in the Criminal Justice Bill is broadly the same as that included in the consultation document and, in the spirit of the ECHR judgment in <i>Marper</i>, it distinguishes between the offences and the offenders, and between adults and children and it provides for an independent Biometric Commissioner to be appointed. It will also apply to fingerprints, DNA profiles and samples currently retained, not just those taken after the legislation is enacted.</p>	<p>The Department welcomes the Policing Board's comments.</p>
<p><b>Northern Ireland Human Rights Commission (NIHRC)</b></p>	<p>The NIHRC welcomes the introduction of reforms to the legislative framework governing the retention of fingerprints and DNA to ensure compliance with the European Court of Human Rights ruling in the case of <i>S and Marper v United Kingdom</i></p>	<p>The Department welcomes the Human Rights Commission's comments.  Retention of DNA profiles and fingerprints is for the sole purpose of the protection of the public and focussed</p>

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	<p>[2008] <u>ECHR 1581</u>.</p> <p>It is the opinion of NIHRC that the Department has clearly been mindful of this judgement in developing these proposals. The Commission recommends that the Committee gives detailed consideration to whether the clauses of the Bill meet the Department's objective of seeking "a <i>proportionate balance between the rights of the individual and the protection of the public.</i>"</p>	<p>on preventing and detecting crime. Material may be retained indefinitely only on the basis of a conviction for an offence serious enough to carry a custodial sentence. Where conviction is not the outcome, material may be retained only in relation to the most serious offences, and for a strictly limited period. The Department considers that that is where the appropriate balance lies.</p>
<p><b>Police Service of Northern Ireland (PSNI)</b></p>	<p>The PSNI highlights that the DNA database and Fingerprint collection are major tools in the PSNI's continued efforts to protect the public and it has fully engaged with stakeholders, including the DoJ, as the retention framework in the Bill has been developed. Acknowledging the imperative of various judgements to effect change the PSNI has closely followed the developments in the Crime and Security Act 2010 and the Protection of Freedoms Act 2012 and the resultant retention framework for England and Wales.</p> <p>The PSNI notes that any change away from</p>	<p>The Department welcomes the PSNI's comments.</p>

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<p><b>DEPARTMENT OF JUSTICE CONSULTATION</b></p>	<p>the current comprehensive framework risks destruction of samples and records that may leave crime undetected but recognises that how this is balanced against the rights of the public to have their records destroyed is a matter of political judgement.</p> <p>The PSNI considers that the fact that the provisions in the Bill reflect those in the Protection of Freedoms Act is an advantage as when it shares information with England and Wales the similar regimes will make it less likely to attract a legal challenge than if there were significant areas of difference.</p>	
<p><b>The Children's Law Centre</b></p>	<p>The Children's Law Centre highlights that the DoJ does not appear to have published a summary of the consultation responses it received to its March 2011 consultation on the policy proposals on the retention and destruction of fingerprints and DNA. The Children's Law Centre believes that the parts of the Bill which deal with this matter are clearly based on the DoJ's initial proposals, and as the Law Centre is aware of at least one other organisation which raised similar concerns to its own, it is the Law Centre's opinion that the Department has</p>	<p>It is correct that the original responses to consultation were not published by the Department, although they were shared with the Committee both in full and in summary form. We have now published the summary on the Departmental website.</p> <p>The Department did look carefully at the concerns raised in consultation. The Bill deals specifically with the retention and destruction of biometric material taken by the police in connection with</p>

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		<p>taken little or no cognisance of the consultation responses it has received and the human rights concerns raised therein.</p> <p>The Commissioner for Children and Young People outlines her concerns that few of the issues she raised in response to the DoJ's consultation have been addressed. In the Commissioner's view only minimal alteration to the original proposals concerning the retention and destruction of fingerprints and DNA profiles and their application to children and young people have been made. The Commissioner is concerned that insufficient consideration has been given to the potentially negative implications of retaining such information, particularly where it impacts on a child or young person's privacy and safety or when it leads them into coming into contact with the criminal justice system.</p>	<p>an offence. The Department considers the degree of interference with the privacy of young persons to be minimal and fully justified in that context.</p> <p>Comments above refer.</p> <p>The Department has to strike an appropriate balance between the protection of society as a whole and the rights of the individual. The retention of biometric material cannot under any circumstances be said to have a detrimental impact on anyone's safety, nor will it lead to them coming into contact with the criminal justice system in the absence of offending. On the contrary, it could help to conclusively rule them out of enquiries.</p>
<p><b>MONITORING OF REQUESTS FOR DISPOSAL OF DNA</b></p>	<p><b>Disability Action</b></p>	<p>Disability Action states that information in relation to the taking, retention and disposal of fingerprints and DNA must be fully accessible to ensure that people with disabilities are not disadvantaged and that</p>	<p>The Department will discuss monitoring and information-gathering around the proposed retention framework with the PSNI and FSNI.</p>



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<p><b>FINGERPRINT S</b></p>		<p>they are fully aware of the effects of the system. This will involve the monitoring of outcomes in relation to the number of people with disabilities requesting disposal of their DNA and fingerprints compared to the general population and consideration given to the formats used in the notification processes.</p>	
<p><b>COST IMPLICATION S</b></p>	<p><b>Northern Ireland Policing Board (NIPB)</b></p>	<p>The NIPB highlights that once the new legislative framework is in force, it will require the PSNI to determine whether to continue to retain, and if not to destroy, existing fingerprints and DNA material. This will cost the PSNI in the region of £2.5 million and will be sought from within existing resources for the 2013/14 financial year.</p>	<p>Money has been included in the policing budget for this purpose, although it was for an earlier financial year. Most of the sum identified will be taken up around the identification and destruction of legacy material.</p>
	<p><b>Police Service of Northern Ireland (PSNI)</b></p>	<p>The PSNI indicates that the new retention framework is complex and offers it many challenges that the current framework does not in terms of technology, decision making and resource allocation.</p> <p>The PSNI also highlights that the process of 'legacy weeding' and business as usual management of the new procedures will</p>	<p>The Department acknowledges that the new framework is more complex than the existing arrangements, but would argue that that is an inevitable consequence of moving from the existing indiscriminate system to one which is ECHR-compliant.</p> <p>Costs involved in the 'legacy weeding'</p>

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<b>PHOTOGRAPH S</b>	<b>Northern Ireland Policing Board (NIPB)</b>	<p>inevitably add expense to the operation and management of the DNA database and fingerprint collection.</p> <p>The NIPB asks whether consideration has been given by the Department of Justice to the introduction of a legislative framework for the retention of photographs by the PSNI.</p>	<p>are included in the figure identified above.</p>
<p>Following the case of <i>R (RMC+FJ) v The Commissioner of Police of the Metropolis</i>, the Association of Chief Police Officers has set up a working group, on which the PSNI is represented, to bring the Management of Police Information (MoPI) guidelines into compliance with the ECHR. The retention of photographs is carried out under those guidelines, and the PSNI will implement agreed best practice. The Department is satisfied with this outcome and does not intend to bring photographs within the retention framework.</p>			
<p><b>SPECIFIC COMMENTS ON THE PROPOSALS IN RELATION TO CHILDREN AND YOUNG PEOPLE</b></p>			
<b>HUMAN RIGHTS STANDARDS</b>	<b>Children's Law Centre</b>	<p>The Children's Law Centre states that it has serious concerns about the taking of fingerprints and the deriving of DNA profiles from DNA samples taken from children and young people and the retention of this material. It believes that</p>	<p>The Department considers that the proposals in the Bill are fully consistent with the standards set out in the UN Convention on the Rights of the Child, given that special provision is made to recognise the need to treat convicted</p>

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	<p>fingerprinting and taking DNA from a child is entirely disproportionate, unjustifiable and in clear breach of children's rights standards. The Children's Law Centre firmly recommends that these practices as they relate to children be halted immediately within the formal criminal justice system.</p> <p>In oral evidence the Law Centre talked about the stigmatising effect that the retention of fingerprints and DNA material would have in its application to children and young people. The Law Centre referred the Committee to longitudinal studies in Edinburgh that demonstrated that, where children have contacted the criminal justice system in any form, they are more likely to feel stigmatised, less likely to be diverted from the criminal justice system and more likely to retain contact with the police or the criminal justice system.</p>	<p>children with leniency to promote their constructive role in society.</p> <p>The retention periods for material from under-18s reflect a judgment as to where the fair balance lies between competing public and private interests.</p> <p>The Bill takes into account, on the one hand, the legitimate purpose of the prevention and detection of crime and the fact that people in this age group include those at the peak age for the onset of offending; and on the other hand, their special situation and the importance of their development and integration in society.</p> <p>In the case of juveniles who have been convicted of serious offences, we consider that indefinite retention is appropriate, in line with the general policy.</p> <p>However, for many young people, involvement in crime is often an isolated incident and can be relatively minor. The Bill therefore provides that young people who are convicted of a</p>
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			<p>first, minor offence will have their data retained for an individually-tailored period of between five and ten years only.</p> <p>In cases where there has been no conviction, research does not support a shorter DNA retention period for juveniles than for adults: the future offending risks for juveniles are in fact higher than for adults. Viewed in isolation, that might justify longer retention for juveniles but, taking into account a range of other factors including the importance of their development and integration in society, retention periods have been kept the same.</p> <p>In such cases the Department considers that the Bill's provisions are sufficiently limited and targeted to be consistent with the safeguards required by the UN Convention.</p>
	<p><b>Women's Support Network (WSN)</b></p>	<p>WSN shares concerns that the provisions in the Bill concerning the taking and retention of fingerprints and DNA profiles from children and young people is in breach of children's rights standards. In its</p>	<p>Comments above refer.</p> <p>The Department sponsors, directly or indirectly, many programmes which work with young people to divert them</p>

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		<p>submission the Women’s Support Network highlights Article 40 of the UNCRC which places an obligation on state parties to recognise the rights of all children, even those who have infringed penal law, to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, and in a way which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child assuming a constructive role in society.</p>	<p>away from the criminal justice system, support them in addressing the causes of offending and to reintegrate them as appropriate.</p>
	<p><b>Dr Linda Moore, Lecturer in Criminology, Politics and Social Policy at the University of Ulster</b></p>	<p>Dr Linda Moore is concerned that the provisions in the Bill regarding the long-term, and sometimes indefinite, retention of children’s fingerprints or DNA, where children are convicted only of minor offences, or in cases when they are not convicted but have previous convictions for minor offending appear to be disproportionate and a potential breach of children’s human rights and civil liberties e.g. in respect of Article 8 of the ECHR (respect for private and family life) and Article 14 (right to the enjoyment of rights and freedoms without discrimination).</p>	<p>Comments above refer.  Juvéniles’ DNA profiles and fingerprints may be retained indefinitely only in cases of serious or repeat offending. We consider that that is where the balance between individual rights and public protection lies.</p>

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	<p><b>NI Human Rights Commission (NIHRC)</b></p>	<p>The NIHRC states that the retention of biometric material taken from children raises particular human rights issues and advises that the Committee considers both obligations placed on the state by virtue of the ECHR and the UNCRC in considering the aspect of the Bill relating to children.</p> <p>The Commission indicates that, in light of the emphasis placed on the stigmatising effect of DNA retention by the ECHR, and the importance which the UNCRC places on promoting a child's sense of dignity and worth, it considers that a strong evidence case demonstrating that the arrangement regarding the retention of DNA material of children assists in the prevention of crime must exist. The Commission suggests that the Committee may wish to seek information from the Department on this matter.</p>	<p>Comments above refer.</p> <p>In the case of juveniles who have been convicted of serious offences or who are repeat offenders, we consider that indefinite retention is appropriate, in line with the general policy.</p> <p>The department examined cohort studies of youth re-offending in Northern Ireland carried out in 2007 and 2008. Of the 2008 cohort (around 2000 individuals), 70.8% had no previous convictions and that group had the lowest, one-year re-offending rate at 30.3%. In other words, approximately half of the study group were first-time offenders who did not go on to re-offend in the period under study. That is the group at which the existing mitigation is aimed. In the absence of further offending and if the offence was a minor one (as most are), material will not be retained indefinitely, but destroyed after five to ten years, depending on length of sentence.</p> <p>However, that group is at one end of a</p>
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			<p>spectrum of offending. Of the same cohort, almost 9% had 9 or more previous convictions and, of that group, 68.9% re-offended within one year. In such cases, we consider indefinite retention appropriate.</p> <p>In the case of juveniles charged with, but not convicted of, a qualifying offence, our assessment is that it is necessary and proportionate to retain the material for three years. We do not believe it is appropriate to differentiate between juveniles and adults in this particular respect, given that the three year period is already relatively short.</p> <p>Retention for a strictly limited three-year period should allay concerns about a long-term detrimental effect on young people's ability to be reintegrated into society and to assume a constructive role.</p>
	<p><b>NI Commissioner for Children and Young People (NICCY)</b></p>	<p>NICCY stresses the importance of human rights principles, particularly the principles of proportionality, necessity and presumption of innocence, underpinning the provisions of the Bill and in its response to</p>	<p>Comments above refer.</p> <p>In the 2008 cohort study referred to above, 47.5% of the cohort were aged 17 years and, of that group, 35% went on to</p>

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		<p>the DoJ's consultation strongly encouraged the Department to ensure that the policy proposals reflect the relevant articles of the UNCRC (16 and 40) and are compatible with Articles 8 and 6 of the ECHR.</p> <p>In oral evidence the Commissioner stated that research suggests that a disproportionate number of young people come into contact with the police and that it may be due to the fact that some are more likely to offend in their teenage years. Children and young people's lack of maturity should be taken into account and they should not be stigmatised by actions undertaken before they have reached adulthood. In the Commissioner's response to the Department's consultation, she suggested that consideration should be given to reviewing the retention of young people's DNA data and fingerprints once they reach 18, so that they might be given an opportunity to enter adulthood with a clean slate. This decision would, of course, be dependent on the seriousness of the crimes committed and the number of offences for which they have been convicted. However, the Commissioner recommended that</p>	<p>re-offend within the first year. The previous year, the figures were 44% and 32% respectively.</p> <p>The Department is aware that the Review of the Youth Justice System in Northern Ireland has recommended that young offenders be allowed to apply for a clean slate on reaching the age of 18 (no decision has yet been taken on this point). However, that is in the context of removing obstacles to future employment, and rehabilitation in society, and is very much focussed on criminal records.</p> <p>The purposes of criminal records and the DNA and fingerprint databases are quite different and deliberately dissociated in the Bill. There is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.</p> <p>In the case of juveniles convicted once</p>
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<p><b>MINIMUM AGE OF CRIMINAL RESPONSIBILITY</b></p>	<p><b>Children's Law Centre</b></p>	<p>particular consideration be given to this proposal where children or young people have been arrested for or charged with minor offences or have been convicted for the first, minor offence.</p>	<p>only of a minor offence, DNA and fingerprints will not be held beyond 10 years. It may be worth drawing to the Committee's attention guidance for FSNI published by the Attorney General for Northern Ireland which recommends a review of retention of material taken from juveniles in <u>all</u> cases after 10 years.</p>
		<p>One of the Children's Law Centre's main concerns with regard to the retention of DNA and fingerprints is the fact that retention will occur within the context of what it believes to be an extremely low minimum age of criminal responsibility of 10 years of age. The Children's Law Centre goes on to state that international standards with regard to the minimum age of criminal responsibility are very clear and that the UN Committee on the Rights of the Child in both 2002 and 2008 recommended that the UK government raise the age of criminal responsibility.</p> <p>The Children's Law Centre is pleased that the recent report of the Review of Youth Justice recommended that the minimum age</p>	<p>The Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE) defines an 'arrested juvenile' as a person arrested who appears to be under the age of 18. It allows police to take DNA samples and fingerprints from anyone of 10 years – the current age of criminal responsibility – or above arrested in connection with a recordable offence.</p> <p>The Department's intention is that the retention framework should apply to anyone who has reached the age of criminal responsibility. The Bill will not affect the taking powers mentioned above, but <u>will</u> restrict the circumstances in which such material may be retained.</p>

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		<p>of criminal responsibility should be raised to 12 with immediate effect and following a period of review of no more than three years, consideration should be given to raising the age to 14. Currently however, it is still the case that once a child reaches the age of 10, s/he can be arrested on suspicion of a criminal offence and it is within this context that the Committee must consider the issue of taking and retaining a child's DNA or fingerprints.</p>	<p>Any change to the age of criminal responsibility would be reflected in the operation of PACE and, hence, in the application of the retention framework.</p>
<p><b>Dr Linda Moore,</b> <b>Lecturer in</b> <b>Criminology,</b> <b>Politics and</b> <b>Social Policy at</b> <b>the University of</b> <b>Ulster</b></p>		<p>Dr Linda Moore, states that it is of particular concern that the provisions in the Bill will relate to children as young as 10 years of age.</p>	<p>Comments above refer.</p>
<p><b>NI Commissioner</b> <b>for Children and</b> <b>Young People</b> <b>(NICCY)</b></p>		<p>The Commissioner for Children and Young People is concerned that children as young as 10 years of age will be required to provide DNA samples and also that it is unclear how their consent will be secured. Obtaining and retaining DNA samples and fingerprints from children requires a detailed consideration of their rights under the</p>	<p>This appears to be a reference to taking powers already in Part VI of PACE, rather than anything in the Criminal Justice Bill.</p> <p>PACE requires that the police ask detained persons for their consent to take a DNA sample and fingerprints</p>

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		<p>UNCRC and especially the principle of the best interests of the child.</p> <p>In oral evidence NICCY highlighted that the capacity to consent is not just an issue for 10-year-olds but for a large proportion of young people at the top end of the spectrum who interact with the criminal justice system have their own needs because of learning disabilities or mental health difficulties.</p>	<p>although, if arrested for a recordable offence, such material may be taken without consent.</p> <p>That provision could apply to a juvenile as to an adult, in which case their parent or guardian would advise.</p> <p>In the absence of a parent or guardian, the Department funds an 'Appropriate Adult' scheme to ensure that young people get the support they need during police investigations and understand what is happening to them and why while they are going through the detention process, including any issues around the taking and retention of their DNA and fingerprints.</p>
<p><b>APPEALS</b></p>	<p><b>NI Commissioner for Children and Young People (NICCY)</b></p>	<p>The Commissioner for Children and Young People suggests that careful consideration should be given as to how a young person under 18 will be supported to undertake an appeal against an extension to the retention period. NICCY states that it is important that appropriate and effective processes/mechanisms are put in place to enable them to pursue an appeal and for any such appeals to be given equal weight and</p>	<p>Any process within the Bill that may involve an appeal to the courts will attract the normal legal assistance appropriate in such cases.</p>

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<p><b>DEPARTMENT OF JUSTICE EQUALITY IMPACT ASSESSMENT</b></p>	<p><b>Children's Law Centre</b></p>	<p>consideration.</p> <p>Within the initial policy consultation process the Children's Law Centre raised serious concerns regarding the decision taken by the DoJ that, following an Equality Screening of the policy proposals, an Equality Impact Assessment (EQIA) was determined not to be required. The Children's Law Centre highlighted to DoJ how children and young people are the most vulnerable group in society and are covered under the age category in section 75 of the Northern Ireland Act 1998. It also highlighted the fact that children are not a homogenous group and will be afforded further protection under other categories of section 75. The most relevant protections in relation to the consultation exercise, in addition to age, were protection on grounds of gender, race and religion due to the disproportionate number of young males who come into contact with the criminal justice system, including young black and young Catholic males.</p>	<p>A detailed screening exercise was carried out and no adverse impact on any section 75 category was identified. This reflects the fact that the proposals increase the protections available to all groups.</p> <p>The screening also takes account of the risk of all age groups becoming the victims of crime and the need to provide safeguards.</p> <p>The provisions actually discriminate positively in favour of young people in providing for reduced retention in respect of a single, minor offence.</p> <p>Otherwise, the application of policy, as set out in the retention framework, applies equally to all individuals of or above the age of criminal responsibility.</p>
<p><b>Dr Linda Moore, Lecturer in</b></p>	<p><b>Dr Linda Moore, Lecturer in</b></p>	<p>Dr Linda Moore highlights that the Bill has the potential to impact differentially and</p>	<p>Comments above refer.</p>

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	<p><b>Criminology, Politics and Social Policy at the University of Ulster</b></p>	<p>negatively upon young people as a group as research demonstrates that in Northern Ireland, as in other jurisdictions, children and young people are disproportionately likely to come into contact with the police.</p>	<p>In addition, there is no absolute correlation between coming into contact with the police and having DNA samples taken.</p>
<p><b>Opportunity Youth</b></p>	<p>Opportunity Youth states that it is extremely concerned about the wide-reaching and potentially damaging consequences of some of the provisions contained within the bill in relation to the retention of fingerprints and DNA samples. Opportunity Youth believes that some of the proposals will have a disproportional negative effect on young people and could lead to increased stigmatisation, discrimination and disadvantage.</p>	<p>Opportunity Youth states that it is extremely concerned about the wide-reaching and potentially damaging consequences of some of the provisions contained within the bill in relation to the retention of fingerprints and DNA samples. Opportunity Youth believes that some of the proposals will have a disproportional negative effect on young people and could lead to increased stigmatisation, discrimination and disadvantage.</p>	<p>Comments above refer.</p>
<p><b>Northern Ireland Commissioner for Children and Young People (NICCY)</b></p>	<p>In its consultation response to the DoJ on the policy proposals the Commissioner for Children and Young People expressed its concern that Section 75 is not being adequately enforced in respect of the age criterion and that public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. The Commissioner</p>	<p>In its consultation response to the DoJ on the policy proposals the Commissioner for Children and Young People expressed its concern that Section 75 is not being adequately enforced in respect of the age criterion and that public authorities are consistently failing in their duty to meaningfully consult with children and young people on issues that have direct relevance to their lives. The Commissioner</p>	<p>Comments above refer. Section 75 diversity groups – including those representing children and young people – are included as part of all Departmental consultation exercises as a matter of course.</p>

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			wanted further information on how the Department had sought the views of children and young people.	
<b>SCHEDULE 2</b>				
<b>63B(3)(b) – DESTRUCTION OF FINGERPRINT S AND DNA PROFILES: BASIC RULE</b>	<b>GeneWatch UK</b>	In its submission GeneWatch UK states that provision 63B(3)(b) which allows the Chief Constable discretion in relation to the destruction of material obtained unlawfully or as a result of unlawful arrests or mistaken identity will be problematic e.g. where individuals dispute the circumstances of their arrest or collection of their DNA and fingerprints. GeneWatch recommends that such determinations are either made by a third party or may be appealed to a third party (such as the Police Ombudsman or Northern Ireland Biometrics Commissioner).	63B(3) provides that material <u>must</u> be destroyed if it appears to the Chief Constable that the taking of it was unlawful or based on mistaken identity. The Chief Constable is expected to be proactive in that regard, but there would be nothing to prevent an individual who was convinced that his or her material had been taken in such circumstances from applying to the Chief Constable to have the material destroyed, and any refusal to do so would be challengeable by judicial review.	
<b>63C – RETENTION OF ARTICLE 63B MATERIAL PENDING INVESTIGATI</b>	<b>GeneWatch UK</b>	GeneWatch recommends that the wording of this section is clarified so that individuals who have been ruled out of further inquiries do not have their data retained indefinitely in circumstances where a case is not closed (i.e. when an investigation may be continuing – perhaps for years - but the	GeneWatch recommends that the wording of this section is clarified so that individuals who have been ruled out of further inquiries do not have their data retained indefinitely in circumstances where a case is not closed (i.e. when an investigation may be continuing – perhaps for years - but the	The Department agrees that clarification on this point would be helpful and will pursue it with the draftsman.

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<p><b>ON OR PROCEEDINGS</b></p>		<p>individual has been eliminated from inquiries).</p>	
<p><b>63D - RETENTION OF ARTICLE 63B MATERIAL: PERSONS ARRESTED FOR OR CHARGED WITH, BUT NOT CONVICTED OF, A QUALIFYING OFFENCE</b></p>	<p><b>Children's Law Centre</b></p>	<p>The Children's Law Centre strongly opposes the retention of fingerprints and DNA data of children who have not been convicted of an offence for which that material has been taken as part of the investigation into the offence and who are therefore innocent children. It believes this to significantly undermine the presumption of innocence and due process, to be at odds with the ECHR's <i>Marper</i> judgment and runs entirely contrary to the Government's obligations under international standards.</p> <p>The Children's Law Centre also highlights that the 'prescribed circumstances' referred to in Article 63 D are not outlined within the draft Bill and finds this lack of clarity very concerning. It would like the Committee to examine this issue further.</p>	<p>This was the specific point upon which the ECtHR made favourable reference to the practice in Scotland, so clearly the Court countenanced retention other than solely on conviction.</p> <p>Research suggests that those arrested but not convicted have a significantly higher risk of being convicted of a future offence than otherwise similar individuals who have not previously been arrested, and that this risk does not become the same as that of the general population until a period of 3 – 4¾ years has elapsed, depending on various factors. The research also offers some evidence, albeit less strong, of slightly higher risks of subsequent conviction for those charged with more serious – or 'qualifying' – offences.</p> <p>It is on this basis that a retention period of three years, extendable to five on application to the courts, has been proposed for individuals arrested for,</p>

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<p>but not convicted of, serious violent or sexual offences. Retention reflects <u>not</u> on the innocence of the individual of the offence for which they were arrested, but on the fact that they are, for the time being, part of a group that is at higher risk of future offending.</p>		
<p>The Department is satisfied that some degree of retention in such cases is necessary in the interests of public protection, and has sought to put in place a risk-based system which is balanced and proportionate. Where conviction is not the outcome, only in cases involving serious offences will material be retained, and for a limited period of time; and safeguards will be put in place such that retention in cases involving an arrest but no charge will require independent consent.</p>		
<p>A significant volume of material from those arrested but not convicted will be destroyed, and the database will be primarily populated by those with previous convictions.</p>		



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			<p>On the recommendation of the Northern Ireland Examiner of Statutory Rules and subject to the agreement of the Executive, the Department will bring forward an amendment to add the prescribed circumstances to the Bill.</p>
<p><b>Evangelical Alliance</b></p>		<p>The Evangelical Alliance is of the view that the legislation needs to be amended to ensure that when someone has been acquitted of a crime their sample and fingerprints are destroyed immediately.</p>	<p>Comments above refer.</p>
<p><b>GeneWatch UK</b></p>		<p>GeneWatch UK broadly welcomes the proposed approach to implementing the judgment of the ECHR, however questions whether it is necessary and proportionate to retain material for three years or more from persons who have merely been arrested and not charged with a qualifying offence.</p> <p>GeneWatch suggests that the power to retain material for a three year period (with possible subsequent extension) is restricted to persons who are charged with a qualifying offence, not extended to those who are merely arrested. This would require the deletion of the words “arrested for, or” in 63D paragraph (1)(a) and the deletion of paragraph (5). This change might also allow</p>	<p>Comments above refer.</p>

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	<p>the position of Northern Ireland Biometrics Commissioner to be dispensed with altogether, saving money (including the police time that might be spent in making applications).</p>	
<p><b>NI Commissioner for Children and Young People (NICCY)</b></p>	<p>The Commissioner for Children and Young People is of the view that where a child or young person has not been convicted for, or even charged with an offence, their DNA and fingerprints should not be retained. To do so is to seriously undermine their right to a presumption of innocence until proven guilty, contravening Article 40 of the UNCRC. The Children’s Commissioner also states that clarification is required of the provisions which allow for retention in relation to a young person who has been arrested but not charged if ‘prescribed circumstances apply’.</p> <p>The Commissioner also highlights the importance of ascertaining what the ‘prescribed circumstances’ might be and to consider whether the period of retention proposed is proportionate.</p>	<p>Comments above refer.</p>
<p><b>NI Human Rights</b></p>	<p>The NIHRC broadly welcomes the provisions</p>	<p>Comments above refer.</p>

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<p><b>Commission (NIHRC)</b></p>	<p>of the Bill relating to the retention of DNA profiles of individuals who have been charged or arrested but not convicted of an offence. However it recommends that the Committee considers the circumstances in which a person who has been arrested but not charged may have their DNA retained.</p> <p>The Commission also suggests that the Committee considers whether provision for the retention of DNA profiles of individuals charged or arrested with a qualifying offence appropriately safeguards the presumption of innocence.</p> <p>In relation to 'where prescribed circumstances apply' the NIHRC notes that these are not defined in the Bill but instead will be defined by way of an Order and suggest that the Committee invite the Department to define the circumstances in which an arrested persons' fingerprints and DNA profile may be retained within the Bill and to request details of the evidential basis informing this approach.</p> <p>In oral evidence the Commissioner indicated that the NIHRC accept that there will be</p>	<p>Grounds upon which an order may be sought would be an operational matter for the police. It would be for them to make the argument on a case-by-case basis, to the satisfaction of the courts.</p> <p>The biometric commissioner will be a "public authority" within the definition of section 6 of the Human Rights Act 1998. Section 6(1) provides—</p> <p>"It is unlawful for a public authority to act in a way which is incompatible with a Convention right."</p> <p>Under section 6(3), "public authority" includes—</p> <p>(a) a court or tribunal, and</p> <p>(b) any person certain of whose functions are functions of a public nature,"</p> <p>The biometric commissioner is therefore covered by section 6(3)(b).</p> <p>Further, section 3 requires that—</p>
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	<p>certain circumstances in the interests of public safety and public order under which even the data of unconvicted persons can be retained however the 'prescribed circumstances' need to be assessed from a human rights point of view particularly in relation to the rights of privacy and the presumption of innocence, which is why they need to be listed on the face of the Bill.</p> <p>The Commission also suggests that information on the grounds upon which an order may be sought or on which an appeal may be brought should be requested.</p> <p>In oral evidence the Commissioner stated that the NIHRC had no problem with the appointment of a biometric commissioner as it could make for a more efficient operation of the state, however, guarantees in the legislation that the biometric commissioner will carry out his or her responsibilities in a manner that is compliant with the human rights obligations of the United Kingdom is required.</p> <p>There should therefore be a statutory statement to that effect.</p>	<p>"So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with Convention rights." .</p> <p>The biometric commissioner will be a public authority and will be obliged to observe the ECHR. The amendment proposed by the NIHRC is therefore not required.</p>
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<p><b>Opportunity Youth</b></p>	<p>Opportunity Youth states that Article 40 of the UNCRC affords all children the right to be presumed innocent until proven guilty according to law. The retention of the DNA and fingerprints of children, young people and adults, who have not been convicted of an offence, or may not even have been charged with an offence, entirely undermines their right to be presumed innocent until proven guilty.</p> <p>Opportunity Youth fundamentally disagrees with the need for the introduction of a Biometric Commissioner and believes that the courts should be the ultimate arbiter of what should or should not be retained.</p>	<p>As explained above, retention reflects <u>not</u> on the innocence of the individual of the offence for which they were arrested, but on the fact that they are, for the time being, part of a group that is at higher risk of future offending.</p> <p>The Department is satisfied that some degree of retention in such cases is necessary in the interests of public protection.</p>
<p><b>NIACRO</b></p>	<p>NIACRO states that the notion of retaining information from anyone who falls under the category of “non-convicted persons” is clearly offensive to the notion of innocence unless and until guilt is proven. The entire justice system is based on the principle that every person, whether questioned, charged or otherwise suspected of an offence, is innocent, unless their guilt is proven within a court. The suggestion of retaining fingerprints from someone who is “charged</p>	<p>Comments above refer.</p>

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	<p>with but not convicted” of any offence is quite blatantly disregarding the court’s judgement in such a case.</p> <p>Furthermore, no description is provided of the ‘prescribed circumstances’ under which someone who is only arrested, and not even charged with, an offence should have their DNA or fingerprints retained. Whilst NIACRO supports the retention of relevant biometric material for the duration of any investigation, or consequent appeal, once such inquiries have been concluded, and a person’s innocence retained, there does not appear to be any good reason for retaining their DNA or fingerprints alongside information about offences of which they were never convicted.</p>	
<p><b>NI Policing Board (NIPB)</b></p>	<p>The NIPB highlights that the proposal that the DNA profiles and fingerprints of persons arrested <i>but not charged</i> of a serious offence may be retained for up to 3 years, extendable on application to a court by a further 2 years, was not proposed in the framework set out in the consultation document. Instead, the consultation document proposed that the DNA profiles</p>	<p>No comment required.</p>

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		<p>and fingerprints of persons arrested but not charged would be destroyed immediately, regardless of seriousness of charge or extenuating circumstances. The change made in the Bill was advocated by the PSNI who felt that the threshold for retention in the consultation document for serious offences was too high. As a safeguard, the Bill proposes that if the Chief Constable wants to retain fingerprints or profiles of persons arrested for, but not convicted of, a serious offence to which prescribed circumstances apply, consent must be sought from the Biometric Commissioner.</p>	
<p><b>Police Service of Northern Ireland (PSNI)</b></p>	<p>One area of concern to the PSNI is the definition of 'prescribed circumstances' that will permit the retention of material from someone arrested for, or charged with, a qualifying offence in limited circumstances and for a limited period.</p> <p>The PSNI notes that prescribed circumstances will be defined and made by a separate Order but will be analogous to Section 3 of the Protection of Freedoms Act. This permits application for retention to be made to an independent commissioner</p>	<p>The prescribed circumstances, now to be set out in the Criminal Justice Bill, will reflect those in the Protection of Freedoms Act 2012 with the exception, as described by the PSNI, of the second part of the provision.</p> <p>The provision is aimed at protecting some of the most vulnerable in society and, in that regard, the Department considers that a formulation focussing closely on the protection of the public, rather than the broader prevention and</p>	

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	<p>where the victim is (a) under 18; (b) a vulnerable adult; or (c) associated with a person to whom the material relates. A further provision of Section 3 permits an application to retain material where, when the foregoing conditions do not exist, the Chief Officer of police considers it necessary to assist in the prevention or detection of crime. A similar provision, although perhaps not as encompassing, would be to permit the Chief Constable to make an application for retention where a risk of harm exists and he considers it necessary for Public Safety.</p> <p>The PSNI wishes to see the proposed Order reflect the provision in the Protection of Freedoms Act as closely as possible to give maximum protection within the framework.</p> <p>In oral evidence the Children's Law Centre stated that when considering what the provisions may look like in the legislation, it thought that there may be scope to apply articles 63D and 63E to adults only. Then, looking at a particular provision, if it was in the mind of the legislature to try to retain any DNA and fingerprints of children and young people, which the Children's Law Centre opposes, then a specific clause should</p>	<p>detection of crime, is appropriate.</p>
<p><b>Children's Law Centre</b></p>		<p>As stated above, the future offending risks for juveniles are higher than for adults. The retention periods for material from under-18s reflect a judgement as to where the fair balance lies between competing public and private interests.</p> <p>The retention of biometric material should have minimal impact on the</p>



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<p><b>63E – Retention of Article 63B material: persons arrested for or charged with a minor offence; and</b></p> <p><b>63F – Retention of Article 63B material: persons convicted of a recordable offence</b></p>	<p><b>GeneWatch UK</b></p>	<p>relate to children and young people that takes cognisance of some of the issues — hopefully, not cautions — of children who committed minor offences and are trying to their life back on track. The Children’s Law Centre suggested that a child-specific clause may be needed that takes cognisance of that and of the excellent work going on in other parts of DOJ around diversion.</p> <p>GeneWatch questions the necessity and proportionality of the provisions to retain material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. In GeneWatch’s view time limits should be reintroduced for the retention of data from adults convicted or cautioned for a single minor offence and the retention regime for children should also be modified so that conviction or caution for more than one minor offence does not result in indefinite retention of material.</p>	<p>rehabilitation of any individual, juvenile or adult. There is no question of anyone ever having to declare retention of their DNA or fingerprints, and that retention will not bring them into further contact with the justice system in the absence of further offending.</p>
	<p><b>Dr Linda Moore, Lecturer in Criminology,</b></p>	<p>Dr Linda Moore raises concerns about the provisions regarding the long-term and sometimes indefinite retention of children’s</p>	<p>Comments below, in response to the NIHRC, refer.</p> <p>Comments below, in response to the NIHRC, refer.</p>

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<p><b>Politics and Social Policy at the University of Ulster</b></p>	<p>fingerprints or DNA where children are convicted of minor offences or not convicted but have previous convictions. Dr Moore believes such powers appear to be disproportionate and a potential breach of children’s human rights and civil liberties.</p> <p>Dr Moore states that the holding of information indefinitely is not in keeping with the rehabilitative ideal, and the possibility of a fresh start in life. This is particularly important in the case of some children and young people who may commit misdemeanours and minor offences in their early years, but through the natural process of maturation later desist from offending. The Bill is also disrespectful to the concept of innocence until guilt is proven.</p> <p>Dr Moore goes on to state that young people in Northern Ireland have been stigmatised and demonised in the past, and many have experienced social disadvantage. It is vital therefore that political representatives do not put into place legislation which will further criminalise children and young people for what may be minor offending and will allow individuals little opportunity to</p>	<p>The Department is aware that the Review of the Youth Justice System in Northern Ireland has recommended that young offenders be allowed to apply for a clean slate on reaching the age of 18 (no decision has yet been taken on this point). However, that is in the context of removing obstacles to future employment and rehabilitation in society and is very much focussed on criminal records.</p> <p>The purposes of criminal records and the DNA and fingerprint databases are quite different and deliberately dissociated in the Bill. There is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.</p> <p>As stated above, retention reflects <u>not</u> on the innocence of the individual of the offence for which they were arrested, but on the fact that they are, for the time being, part of a group that is at</p>
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	<p>redeem themselves.</p> <p>The NIHRC suggests that the Committee considers whether the indefinite retention of the fingerprints or DNA profile of an adult convicted of a recordable offence is fair and proportionate given the indiscriminate nature of this approach. The Commission also considers that it would be good practice to provide a right for individuals to apply for the destruction of their fingerprints and DNA.</p> <p>The Commission questions whether the proposals comply with recommendation No. R(87) 15 of the ECHR in the S and Marper case which states:</p> <p><i>“Measures should be taken to ensure that the results of DNA analysis are deleted when it is no longer necessary to keep it for the purposes for which it was used. The results of DNA analysis and the information so derived may, however be retained where the individual concerned has been convicted of serious offences against the life, integrity or security of the persons.”</i></p> <p>The Commission also highlights that the</p>	<p>higher risk of future offending.</p> <p>Under the powers in Part VI of PACE, a DNA sample and fingerprints may be taken on the arrest of an individual for a recordable offence (i.e. any offence which may attract a custodial sentence). The list of such offences covers a broad spectrum from the most serious possible to the less serious. However, there are many other offences which are non-recordable and so will not attract a custodial sentence, in respect of which the police have no power to take DNA or fingerprints, so there is a clear threshold.</p> <p>The Department acknowledges the concerns expressed around the proportionality of allowing indefinite retention in respect of lesser offences. However, any police officer has to apply the principles of necessity and proportionality before making an arrest. Arrest is by no means the inevitable conclusion of the commission of a recordable offence. The power of arrest must be fully justified. Please note that</p>
<p><b>NI Human Rights Commission (NIHRC)</b></p>		

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	<p>definition of 'recordable offence' contained within the Northern Ireland Criminal Records (Recordable Offences) Regulations 1989 includes a wide range of offences and suggests that the Committee may wish to consider whether periods of retention should be staggered depending on the seriousness of the offence. The Commission suggests that consideration is given as to whether recordable offences should be further classified according to gravity. In oral evidence the Commissioner used the example of a person committed to prison for non-payment of a TV licence and another convicted of multiple murder to demonstrate the breadth of offences to which the provisions will apply and to illustrate the need for proportionate action.</p> <p>The Commissioner stated his concern that by treating the situation of a convicted person in the manner that the Bill does, is, based on the evidence from the European Court going too far. The Commissioner cited the example of a Netherlands case in which the court was very clear that you could not take a blanket approach to convicted persons and that the application of the</p>	<p>the antiquated offences cited by NIACRO in its written submission to the Committee are <u>not</u>, in fact, recordable offences.</p> <p>The framework contained in the Criminal Justice Bill sets the upper limits on the retention of biometric material in a range of circumstances. It <u>permits</u> indefinite retention on conviction for a recordable offence (as in the other UK jurisdictions); it does not require it. Within the boundaries established by the framework, the police have complete discretion over the retention of material. The judgment of the Supreme Court in the case of <i>R (GC) (FC) v The Commissioner of Police of the Metropolis [2011] UKSC 21</i> makes clear that they are expected to exercise that discretion in a manner compatible with the ECHR.</p> <p>Rather than attempt to restrict the range of offences potentially resulting in the indefinite retention of material, the Department considers it appropriate to leave the matter to the professional</p>
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	<p>principle of proportionality is demonstrated in each case where data is retained i.e. it is legitimate to retain material but a proportionate action in light of the convicted person's right to privacy must be exhibited. It is the Commission's view that this has not been taken into account in the Bill and the Commissioner suggested that the Bill is vulnerable to future legal challenge.</p> <p>The Commissioner also raised concerns that the legislation did not provide for a clear straightforward process whereby an aggrieved person can make a complaint to court. The Commissioner outlined the current situation where a person can apply to the Chief Constable who, through an internal police administrative procedure, can determine whether the data will be retained. Judicial Review is the only appeal to the Chief Constable's decision which is one of the least efficient and most expensive ways to get justice. The NIHR wants a procedure whereby the court or, in the first instance, the biometric commissioner has a clear, well-publicised and laid out step-by-step process through which the aggrieved person can make a petition that will be</p>	<p>judgement of the police.</p> <p>On the question of review, it is open to anyone – under the current system <u>and</u> under the proposed framework – to apply to the police to have their material removed. No specific review mechanism is included within the framework because any refusal by the police to remove material from the database would be challengeable by judicial review and the Department has always been of the view that that should be sufficient. The same is true of the framework set out for England and Wales in the Protection of Freedoms Act 2012. Commenting on that framework at its 1115<sup>th</sup> meeting on 26 May 2011, the Committee of Ministers of the Council of Europe concluded that—</p> <p>“Whilst no possibility of individualised review has been created, ... in the context of the revised proposals judicial review should provide a sufficient procedural safeguard.”</p>
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	<p>assessed according to clear criteria so that an answer comes down. Based on that answer, if it continues to be negative, the person should have a route not into the High Court but into a lower court, where the costs are lower and the whole proceeding is more efficient, straightforward and speedy.</p>	
<p><b>NIACRO</b></p>	<p>NIACRO also raises concerns regarding the use of 'recordable offence' suggesting that using this definition will be the equivalent of employing a sledgehammer to crack a peanut. For not only does it include people convicted of minor offences who are never actually sent to prison, but could have been, it also includes people who are unable to pay a range of fines, or apparently those who commit a series of antiquated offences.</p> <p>NIACRO points out that the Department of Justice is currently considering undertaking a review of the scope of "recordable" offences and recommends that this legislation is not commenced until after the outcome of that review to ensure any new definition is automatically incorporated.</p> <p>NIACRO also highlights that the provisions</p>	<p>Comments above refer.</p> <p>The Northern Ireland Criminal Records Working Group has been closely involved with the Home Office on various matters including the concept of the recordability of offences.</p> <p>Recommendations will go to Ministers as a result of this work.</p> <p>Early indications are that the focus of the recommendations will be not on imprisonable offences but on what non-imprisonable offences should also be considered recordable.</p> <p>The Department is not aware that any outcome of the review should delay implementation of the proposed retention framework.</p>

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	<p>in the Bill in relation to indefinite retention should be consistent with existing legislation governing criminal records, that after various periods, in specific circumstances, certain convictions become “spent” and no longer have to be declared. The Bill should, therefore, differentiate between varying lengths of imprisonment and the nature of different offences, with the basic principle that biometric data should never be retained for longer than the relevant rehabilitation period.</p>	<p>The Department is not inclined to link retention of biometric material to the reckoning of convictions for criminal record purposes. The purposes of criminal records and the DNA and fingerprint databases are quite different and deliberately dissociated in the Bill. There is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.</p>
<p><b>NI Commissioner for Children and Young People (NICCY)</b></p>	<p>The Commissioner for Children and Young People does not believe that the retention periods specified for a child or young person’s fingerprints and DNA sample constitute a proportionate response and recommends the Committee consider reducing the period of retention for young people who are convicted for a first minor offence.</p> <p>In oral evidence the Commissioner stated that children and young people should be afforded maximum protection under the law</p>	<p>As stated above, any police officer has to apply the principles of necessity and proportionality before making an arrest. In cases where arrest and conviction are the outcome, then within the boundaries established by the framework, the police have discretion over the retention of material.</p> <p>Given that the future offending risks for juveniles are higher than for adults, the Department would not consider individually-tailored retention of</p>

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		<p>however 5 years without adding on the period of the custodial sentence is a considerable period for a child or young person's personal details to be retained by government and suggested that consideration be given to reducing the period of retention of DNA and Fingerprint material for young people who are convicted of a first minor offence.</p>	<p>between five and ten years to be excessive for a first, minor offence, and considers it appropriate to leave the matter to the professional judgement of the police.</p>
<p><b>Children's Law Centre</b></p>	<p>The Children's Law Centre is also of the view that the retention of fingerprints taken or a DNA profile derived in connection with the investigation of minor, recordable offences, which ultimately leads to the conviction of a child or young person, is not a proportionate response.</p> <p>It refers to a recommendation of the Council of Europe's Committee of Ministers and by the European Court of Human Rights in the <i>S and Marper</i> judgement which sets out that the results of DNA analysis should be routinely deleted when no longer necessary to keep them for the purposes for which they were used, and that retentions should only take place: "where the individual concerned has been convicted of serious offences</p>	<p>Comments above refer.</p> <p>Notwithstanding that the UK Government has signed up to Recommendation R(92)1 of the Council of Ministers, conviction for a recordable offence is the threshold permitting indefinite retention in the other UK jurisdictions and the Department remains convinced that it is the appropriate threshold for use here.</p> <p>Within the boundaries established by the framework, the police have complete discretion over the retention of material. However, that discretion must be exercised having regard to international human rights standards relevant to the</p>	



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	<p>against the life, integrity or security of persons' subject to "strict storage periods defined by domestic law".</p> <p>The Children's Law Centre points out that Articles 63 F and 63 H will apply to recordable offences, which the legislation acknowledges to be minor offences, rather than serious offences against life, integrity or security of persons and that to allow material to be potentially retained indefinitely in such circumstances would also not accord with the concept of it being retained subject only to strict storage periods.</p>	<p>criminal justice system.</p>
<p><b>Opportunity Youth</b></p>	<p>Opportunity Youth disagrees with the provisions that allows for the indefinite retention of fingerprints and DNA profile of children and young people and feels the retention of DNA should bear some relation to the seriousness of the offence, be subject to strict periods of storage and continually reviewed.</p> <p>Opportunity Youth is concerned that the inclusion of minor offences or any offence punishable by imprisonment is so wide-</p>	<p>Comments above refer.</p> <p>Where an adult has a conviction or a caution for a recordable offence, their fingerprints and DNA profile may be retained indefinitely. If they are subsequently arrested in connection with a further recordable offence and their profile and fingerprints have been retained, it is unlikely that a further DNA sample would be taken, as DNA does not change over time; but their</p>

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	<p>reaching it has the potential to encompass a large section of society including people whose crimes are very much on the lower end of the scale such as fine defaulters. The principle of retaining such information indefinitely is contrary to much of the legislation governing the rehabilitation of offenders, which enables certain offences to be considered spent and removed from a person's criminal record. A tighter definition may be to have included all qualified recordable offences rather than a catch-all approach.</p> <p>For adults who have one caution for a minor offence as part of their criminal record, and who received that caution for an offence that was committed when they were over 18, their fingerprints or DNA will be retained indefinitely when arrested for or charged with serious or minor offences even though they are not subsequently convicted. An adult who has their fingerprints or DNA taken in connection with a minor offence and receives a caution for that offence will have their fingerprints or DNA retained indefinitely. This again appears to be ill-measured and over the top.</p>	
	<p>fingerprints will be taken again as these may change over time.</p> <p>Whatever the outcome in relation to this particular investigation, that material may be retained indefinitely on the basis of the earlier conviction, the purpose being to ensure that existing, lawfully-held records are as up-to-date as possible.</p>	

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<p><b>63H – Retention of Article 63B material: exception for persons under 18 convicted of first minor offence</b></p>	<p><b>The Children’s Law Centre</b></p>	<p>Opportunity Youth also seeks further clarity around the appeals process. Opportunity Youth highlights that an appeal seems only available in the instances where a Chief Constable seeks leave to extend three-year retention by a further two years and states that appeals should be available in all cases.</p> <p>In oral evidence the Children’s Law Centre states that Article 63H proposes to link the amount of time that a child or young person’s fingerprints or DNA are retained to the length of their sentence, where the child is being convicted of a first minor offence. Article 63H also allows for the retention of fingerprints and DNA where children are given non-custodial sentences in respect of a first minor offence. The Law Centre does not believe that the retention of fingerprints taken or DNA profile derived in connection with the investigation of minor recordable offences, where the child or young person is subsequently convicted, is a proportionate response.</p> <p>The Centre also questioned whether there is potential for the fingerprints and DNA to be</p>	<p>Comments above refer.</p> <p>A caution is treated as a conviction for the purposes of the retention framework. In the case of a juvenile receiving a caution for a first, minor offence, the framework allows the material to be retained for up to five years, at the discretion of the police.</p>
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<p><b>63L - Destruction of copies</b></p>	<p><b>GeneWatch UK</b></p>	<p>retained for 5 years for a child who receives their first caution. GeneWatch states that this provision allows police to retain copies of DNA profiles provided the individual cannot be identified from them: but in practice anonymising DNA profiles may be impossible. In England and Wales, the inclusion in the Protection of Freedoms Act of a similar provision has been contentious and the decision to allow the retention of copies has led to some loss of public trust in the protection provided by the Act.  GeneWatch recommends that the status and use of batch files created at Forensic Science Northern Ireland (FSNI) is clarified, preferably with the assistance of the Information Commissioner's Office Northern Ireland, including: (i) whether or not such batch files are in practice created and retained at FSNI; and (ii) whether indefinite retention of such files is really necessary and proportionate. A revised provision should then be introduced which ideally eliminates the retention of copies altogether or, at minimum, provides a time limit or other restrictions on the retention of such</p>	<p>One of the requirements placed upon FSNI for accreditation purposes is that analytical records be maintained that map the process from sample in to profile out.  Subject samples are processed in batches and it is not possible to delete single profiles from the rest of the batch.  In acknowledgement of that, a new processing identifier has been introduced so that Forensic records are no longer associated with the original sample barcode but with a separate, self-generated barcode connected to the sample barcode by an electronic key. On receipt of a deletion instruction, FSNI erases the database entry and deletes the key: there remains no link between the original sample identifier and FSNI analytical records.  Correspondence from the Chairman of the National DNA Database Strategy Board confirms that—</p>
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<p><b>63M – Destruction of samples</b></p>	<p><b>GeneWatch UK</b></p>	<p>data.</p>	<p>“The Information Commissioner is satisfied ... that the deletion of the associated records will remove the link between the identity of the individual and the data which will be retained in the batch on the electropherogram. This will effectively put the retained data ... beyond practical use as it should be no longer possible to re-link the individual to the data retained and even though it is still capable of being personal data the privacy and compliance risks become negligible in practice.”.</p>
	<p>GeneWatch UK welcomes the provisions for the destruction of samples once the computerised DNA profiles needed for identification purposes have been obtained from them. This is an important protection for privacy and human rights because stored DNA samples contain unlimited genetic information, including health-related samples is necessary for quality assurance purposes and the stated period of six months’ retention is clearly adequate.</p>		<p>The Department welcomes Gene Watch’s comments.</p>

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<p><b>63N – Use of retained material</b></p>	<p><b>GeneWatch UK</b></p>	<p>Adoption of this provision is in line with best practice internationally.</p>	
<p>GeneWatch states that there is a problem with the phrase “purposes related to” the prevention or detection of crime as it can be interpreted broadly and is open to abuse. In England and Wales, this phrase was used to allow controversial research attempting to predict people’s ethnic appearance from their DNA profiles, on the grounds that such research involved a purpose related to the prevention or detection of crime. GeneWatch states such research is unethical and recommends that an additional clause is added to specifically prevent such uses.</p> <p>GeneWatch also states that the use of material to identify “the person to whom the material relates” is also open to abuse. This use goes beyond the identification of deceased persons and body parts to allow the identification of living persons who are not suspected of committing a crime. GeneWatch recommends that the phrase “the person to whom the material relates” should therefore be deleted and replaced with “body parts”.</p>			<p>There is nothing in a DNA profile that definitively identifies any characteristic other than gender. Much more information – for example, about race or health – is available from the biological DNA sample and it is expressly in recognition of the sensitivities around that that the Bill provides for samples to be retained for no longer than 6 months, unless likely to be needed in proceedings.</p> <p>The Department considers that confirming a person’s identity or, indeed, establishing that they have previously been arrested under a different name are entirely legitimate uses of biometric material.</p>

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<p><b>Schedule 3</b></p>	<p><b>53B(1) – Persons convicted of an offence</b></p>	<p><b>Children’s Law Centre</b></p>	<p>The Children’s Law Centre points out that cautions do not have the same status as convictions under other aspects of the criminal law and is very concerned that various parts of the proposed legislation effectively mean that a child who receives 2 cautions for minor, recordable offences will have their fingerprints or DNA profile retained indefinitely.</p> <p>It is the view of the Children’s Law Centre that considering cautions in this way is an entirely disproportionate course of action and runs contrary to the purported purpose of a caution which is to divert children away from the criminal justice system. Whilst highlighting in oral evidence that the Children’s Law Centre does not believe that cautions adequately divert children away from the criminal justice system at present (instead diverting children from one part of the system to another) however the Law Centre believes that the situation will be exacerbated if the use of cautions results in a child’s fingerprints and DNA profile being</p> <p>A caution is treated as being equivalent to a conviction for the purposes of the retention of DNA profiles and fingerprints because it involves acceptance of guilt. There is no logical basis for treating it otherwise for the purposes of the DNA and fingerprint databases, which are, as observed above, quite different from criminal records.</p> <p>Again as stated above, recommendations around a clean slate on reaching the age of 18 are in the context of removing obstacles to future employment and rehabilitation in society. There is no question of anyone ever having to declare retention of their DNA or fingerprints. Such retention will never affect future employment prospects or, in the view of the Department, rehabilitation.</p> <p>At present, cautions are the only diversionary disposal treated as a</p>

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	<p>retained indefinitely.                  The Centre pointed out that the Public Prosecution Service code for prosecutors makes it clear that cautions are not a conviction: They are recorded on the criminal record of a child for 30 months and on that of an adult for 5 years. There is therefore some disconnect between this Bill and what happens under other aspects of the law.</p> <p>The Children's Law Centre stated that cautions as they apply to children and young people should not be considered as a recordable offence in the legislation and should be excluded from it and that this position is in compliance with the recommendations of the youth justice review that cautions, along with other convictions as they relate to children and young people should be wiped clean when they reach 18. There should be a qualifying provision in the legislation to say that caution's as they relate to children and young people under the age of 18 should not be treated as a recordable offence.</p> <p>The Centre also questioned whether the</p>	<p>conviction for the purposes of the retention framework, although consideration is being given to treating completion of a diversionary youth conference similarly.</p>
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	<p>range of other diversionary measures apart from cautions e.g. an informed warning or diversionary youth conference fall within article 53B as they are intended to have the same effect as a caution i.e. divert children and young people away from the criminal justice system.</p>	
<p><b>GeneWatch UK</b></p>	<p>GeneWatch highlights that the Bill treats persons who have been cautioned as if they are convicted. All adults cautioned or convicted for a single minor offence, and all young persons cautioned or convicted for more than one offence will have their records retained indefinitely. GeneWatch suggests that more consideration should be given to whether this is necessary and proportionate.</p>	<p>Comments above refer.</p>
<p><b>The NI Commissioner for Children and Young People (NICCY)</b></p>	<p>The NI Commissioner for Children and Young People is concerned that the draft Bill includes a caution within the definition of an offence for which a person is convicted and given that the purpose of a caution is to divert young people away from the criminal justice system, the inclusion of cautions under the definition of offences seems inappropriate and disproportionate.</p>	<p>Comments above refer.</p>

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	<p><b>NIACRO</b></p> <p>NIACRO indicates that the approach in the Bill relating to convicted under 18s is entirely inconsistent with the spirit of the Youth Justice Review, which recommended that criminal records be “wiped” when a young person turns 18. The idea of retaining a young person’s biometric data for five years after even a caution is clearly disproportionate, and sits in opposition to any attempt to divert young people from the justice system. If the system is committed to de-criminalising young people, it should not be seeking to build or retain any such profiles, for five years or any longer period.</p>	<p>Comments above refer.</p>
<p><b>Opportunity Youth</b></p>	<p>Opportunity Youth states that it is particularly concerning that the Bill includes ‘cautions for offences’ within the ‘definition of persons convicted of an offence’. This clearly suggests that a child or young person who has more than one caution as part of their criminal record will have their fingerprints or DNA retained indefinitely if arrested or charged with serious or even minor offences, or will have the material retained indefinitely if it is taken in relation to a second minor offence for which they are given a caution, having already received a</p>	<p>Comments above refer.</p>

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		caution previously. Opportunity Youth believe this to be entirely disproportionate, running contrary to the purpose of a caution, which is to divert children away from the criminal justice system.	
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## Appendix B

### **JCP\12\396: HUMAN TRAFFICKING: CLAUSES 5 AND 6 OF THE CRIMINAL JUSTICE BILL**

#### **Summary**

**Business Area:** Protection and Organised Crime Division, Safer Communities.

**Issue:** Department's comments on issues raised by respondees on clauses 5 and 6 of the Bill in response to the Committee's call for evidence and the Department's response to issues raised at the evidence session on 20 September on these two clauses in the Bill.

**Restrictions:** None.

**Action Required:** For Committee evidence session on 8 November.

**Officials Attending for clauses 5 and 6:** Simon Rogers Deputy Director Protection and Organised Crime Division  
Debbie Pritchard Protection and Organised Crime Division  
Amanda Patterson Criminal Policy and Legislation Division

#### **Background**

#### **Issues raised by respondees to the Committee's call for evidence on the Bill**

The Department's comments on the issues which were raised are set out in the Committee template, which is attached.

## **Definitions**

We note that some respondents to both the Committee's call for evidence and some of those who responded to our consultation considered that definitions, particularly in relation to 'trafficking', 'victims' and 'habitual resident', should be included in Northern Ireland legislation. We are concerned that there is a risk in being overly prescriptive and enshrining certain aspects in legislation as this could –

- Limit flexibility in relation to dealing with individual cases;
- Make it more difficult to respond quickly to changes in criminal behaviour; and
- Create loopholes and provide criminals with a means to work around the legislation.

The Department sought views on including definitions in Northern Ireland legislation from the Public Prosecution Service (PPS). PPS has considered this from a prosecutorial perspective.

PPS has advised that the circumstances of a human trafficking case can vary greatly. The acts referred to in Articles 2.1 and 2.3 of the EU Directive would already be covered by the existing offences for England and Wales and NI. There may be cases where the circumstances of the trafficking are more subtle and there may be no evidence of the means referred to in Article 2.1. PPS has noted that if Article 2.1 is included as a definition of trafficking or included in the definition of the offences then we may limit the offence and will therefore be unable to prosecute the offence of trafficking in cases where there is no evidence of the means contained in the definition.

We would therefore caution strongly against such provisions in the legislation.

## **Issues raised at the Committee evidence session on 20 September.**

### Sentencing provisions in Magistrates Courts in Northern Ireland and England and Wales

At the Committee evidence session on 20 September, members asked about the sentencing provisions for human trafficking offences in the Magistrates Courts here and in England and Wales. It appeared that when dealing with a summary offence of human trafficking, a Northern Ireland District Judge had power under the Magistrates' Court (Northern Ireland) Order 1981 ("the 1981 Order") to impose a sentence of six months in prison but that section 154 of the Criminal Justice Act 2003 made provision for England and Wales to increase the general limit on Magistrates' Courts powers to impose imprisonment in respect of any one offence (comparable to our six months powers) from six to twelve months.

The position in England and Wales has now been clarified. We have been advised that the sentence of up to 6 months on summary conviction for human trafficking offences here is consistent with that available in England & Wales and Scotland. Section 59A (6) 'Trafficking people for sexual exploitation' in the Sexual Offences Act 2003 and Section 4(5) (b) 'Trafficking people for exploitation' in the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 make reference to 'a term not exceeding twelve months' on summary conviction. Section 154 of the Criminal Justice Act 2003 made provision for the extension of sentencing powers in the Magistrates' Courts in England and Wales from 6 months to 12 months. However, section 154 has not been commenced (nor, we understand, is it likely to be in the immediate future), consequently the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provide for the penalty of 6 months until its commencement. Provision in Scotland is set out in section 22(3) of the Criminal Justice (Scotland) Act 2003, which also provides for a sentence of

up to six months on summary conviction. We apologise for the confusion over this.

The Minister agrees fully with the strongly held view that Northern Ireland should be seen as a hostile place for traffickers and notes that sentencing is one of the tools for tackling this crime. He has asked officials to consider the implications of making such offences triable on indictment only (in other words only in the Crown Court). The maximum term of imprisonment would remain 14 years. In addition, trafficking for sexual exploitation is also a “serious offence” within Schedule 1 of the Criminal Justice (NI) Order 2008 and a “specified sexual offence” within Schedule 2 of the Order. As a result, where the court considers that the offender poses a risk of serious harm, the offence may attract either an indeterminate or extended custodial sentence, with future release determined by the Parole Commissioners. Further work on this is required, including fuller consultation with stakeholders, the Committee, the Public Prosecution Service and the judiciary and the Minister has asked officials to take this forward.

#### Possible effect of different sentencing regimes

Members were concerned that different sentencing regimes may lead criminals to target countries thought to be softer on sentencing. We sought advice from the PSNI and have been advised that they are not aware of any evidence to suggest that this is the case.

We note from the supplementary briefing on human trafficking compiled by the Assembly’s Research and Information Service in October 2012, that there is insufficient literature on the subject to confirm whether or not stringent legislation reduces incidences of human trafficking. The paper notes that a report in 2007 on the impact of the Victims of Trafficking and

Violence and Protection Act of 2000 (TVPA) in the United States concluded that the drop in the number of trafficked victims in the United States could be due to the positive impact of the TVPA to deter the crime or “simply due to the unreliability of statistics in this very secretive and shameful international business of buying and selling human cargo.”

The Assembly paper also advised that research indicates that whilst stringent criminal justice responses can deter traffickers, a more holistic approach is required. For example, a commentator on the US model highlights that much work reflects the emphasis on prosecution, however in the long-term prevention is likely to be a much more effective way to avert the exploitation of vulnerable women, men, boys and girls than “seeking to identify and extract victims from their clandestine circumstances once their trafficking experience is underway”. As the Committee is aware, the Department’s response to human trafficking is being taken forward on 3 fronts – prevention, prosecution and protection.

#### Minimum sentences

The Committee also questioned why an offence for human trafficking did not carry a minimum term of imprisonment. The position is that the disposals available to the judiciary reflect the seriousness of the offence. Trafficking for labour and sexual exploitation can attract, on conviction on indictment, a maximum of 14 years imprisonment. As already noted, trafficking for sexual exploitation can attract either an indeterminate or extended custodial sentence, with future release determined by the Parole Commissioners, under provisions in the Criminal Justice (NI) Order 2008. The maximum sentence for trafficking for labour and sexual exploitation in the Magistrates Courts is 6 months imprisonment. There is no provision for a minimum sentence.



The Department notes that when giving evidence to the Committee on the Criminal Justice Bill on 18 October, Assistant Chief Constable Hamilton advised that minimum sentencing has a limited contribution to make in minimising harm and reducing risk.

The Minister believes that sentencing in an individual case should be a matter for an independent judiciary. When the Assembly debated the issue of mandatory minimum sentences for attacks on the elderly, the Minister made clear his view that the discretion of the judiciary should be maintained. Mandatory minimum sentences allow no room for discretion. They make no allowance for the exceptional case, and there is always the possibility of the exceptional case. Minimum sentences can have unintended consequences, something borne out by international experience. Under minimum sentencing, offenders can end up being imprisoned for offences which are at the lowest end of the scale of seriousness.

The Crown Court guidance on sentencing issued by Judge Burgess in 2012 following the R v Pis case, states that human trafficking is ‘serious offending behaviour and ‘the starting point for offences of trafficking for sexual exploitation should be a custodial sentence

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<b>CRIMINAL JUSTICE BILL: TRAFFICKING PEOPLE FOR EXPLOITATION</b>			
<b>CLAUSE/ SCHEDULE/ SUBJECT AREA</b>	<b>ORGANISATION</b>	<b>COMMENTS</b>	<b>DEPARTMENT'S RESPONSE</b>
<b>GENERAL COMMENTS</b>	<b>Disability Action</b>	Disability Action welcomes the strengthening of the protection against trafficking contained in the Bill but indicates that other matters also need to be addressed.	Noted
	<b>CARE in Northern Ireland</b>	CARE in Northern Ireland supports the principle of the new human trafficking offences in the Criminal Justice Bill to meet obligations under the European Directive on Human Trafficking. It also supports the principle of including trafficking within the UK for labour exploitation in the definition of trafficking offences, as it believes that this will improve the situation in Northern Ireland for victims of trafficking and the extension of extraterritorial powers to prosecute UK citizens for trafficking offences committed abroad, which may not directly impact victims in Northern Ireland but	Noted

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		<p>elsewhere.</p> <p>It highlights in its submission that the proposals in the Criminal Justice Bill seek to copy England and Wales in the substance of the changes to be introduced, but it achieves it through a different means, with the outcome that there will be more trafficking offences applicable in Northern Ireland than in England and Wales and is unclear about the rationale for this complexity.</p> <p>CARE in Northern Ireland's view is that the proposals in the Bill reflect a very minimalist approach to implementing the European Directive, casting aside the opportunity for Northern Ireland to build on its great heritage of opposing slavery by developing robust laws and leading the way in the UK. It believes that this is a terrible missed opportunity.</p>	<p>The clauses in the Criminal Justice Bill, although drafted in a different style, cover the same range of criminal activities as in England and Wales and mirror the additional provisions introduced in Scotland which provide for extra-territorial jurisdiction over persons habitually resident in Northern Ireland at the time of committing the offence outside the United Kingdom and companies incorporated under the law of a part of the United Kingdom.</p> <p>The Minister of Justice is clear that changes, whether through statute or administrative means, which will assist the work against trafficking will be considered. But they must add to the provisions and the work already in place.</p> <p>The Minister does not agree that the Northern Ireland Executive is taking a minimalist approach or simply mirroring the changes made to human trafficking legislation in England and Wales. Sections 109 and 110 of the</p>
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	<p>Protection of Freedoms Act 2012 implement the <u>mandatory changes</u> required to the legislation in England and Wales to comply with Article 10(1) of the EU Directive. The provisions in the Criminal Justice Bill will make these changes for Northern Ireland and will <u>also implement the discretionary changes</u> set out in Article 10(2) of the Directive in that the offence will extend to habitual residents and bodies incorporated under the law of a part of the United Kingdom.</p> <p>The maximum term of imprisonment required under the EU Directive is 10 years. The maximum period in Northern Ireland under the current and the proposed legislation, in the Crown Court, is 14 years. Trafficking for sexual exploitation is also a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order and so, where the court considers that the offender poses a risk of serious harm, can attract either an indeterminate or extended custodial</p>
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		<p>In its oral evidence CARE in Northern Ireland stresses the need for work to be carried out on tackling the demand for sexual services</p>	<p>sentence, with future release is determined by the Parole Commissioners.</p> <p>Article 13 of the European Convention provides that there should be a recovery and reflection period of at least 30 days for potential victims of human trafficking. The minimum recovery and reflection period in the United Kingdom is 45 days which can be, and in many cases is, extended by the Competent Authority.</p> <p>The Department agrees that demand is an important area to tackle. It will continue to raise the profile of human trafficking. In part of that, the Department of Justice, through the Organised Crime Task Force, will roll out a communications strategy in 2013 to change public attitudes towards goods and services proffered through organised crime, including victims of human trafficking.</p> <p>The Minister is considering what further steps can be taken with regard</p>
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		<p>In both its written and oral evidence, CARE in Northern Ireland commends Lord Morrow's Bill and further details on this are included under the relevant subject headings.</p>	<p>to prostitution, as part of the review of the Strategy for Managing Women Offenders.</p> <p>The Minister of Justice wrote to Lord Morrow setting out his views on the Bill on 4 October and met Lord Morrow to discuss the Bill on 9 October. A copy of the response has been sent to the Committee.</p>
<b>Mindwise</b>	<p>In its submission Mindwise states its support for legislators in their effort to prevent the degrading and vile offence of trafficking people and fully endorses all measures in the Bill.</p>	Noted	
<b>Northern Ireland Association for the Care and Resettlement of Offenders</b>	<p>The Northern Ireland Association for the Care and Resettlement of Offenders seeks clarification in its submission of how the provisions in the Criminal Justice Bill link to those within Lord Morrow's Private Members' Bill.</p>	<p>We will write to the NIACRO.</p>	
<b>Northern Ireland Policing Board</b>	<p>The Northern Ireland Policing Board welcomes the introduction of the new trafficking offences in the Criminal Justice Bill.</p>	Noted	
<b>Opportunity</b>	<p>Opportunity Youth states in its submission</p>	Noted	

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<p><b>Youth</b></p>	<p>that it supports the new offences created in the Bill and highlights the importance of Northern Ireland having a robust legal mechanism for dealing with such offences as very often the victims in these cases are young people, the vulnerable and the disadvantaged.</p> <hr/> <p>Opportunity Youth notes the planned introduction of Lord Morrow's Private Members' Bill and indicates that it expects departmental officials to look closely at it to ensure consistency and coordination.</p>	<p>See previous comments about Lord Morrow's Bill</p>
<p><b>Northern Ireland Human Rights Commission</b></p>	<p>In its submission, the Northern Ireland Human Rights Commission broadly welcomes the Criminal Justice Bill 2012, and in particular, the provisions relating to human trafficking. However it notes that the legislative framework which outlines offences concerning the Trafficking of Human Beings (THB) is particularly complex in Northern Ireland and already involves reference to the Sexual Offences Act 2003, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, the Sexual Offences (Northern Ireland) Order 2008 and the Coroners and Justice Act 2009.</p>	<p>The Department has consulted on this matter with law enforcement agencies who work with the legislative framework. None of them has advised the Department that the current framework is causing difficulties. The Department may, however, consider a consolidation exercise when other pressing areas of work have been completed.</p> <p>The PPS Policy on Prosecuting Cases of Human Trafficking, which will be published early in 2013, contains a</p>

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		<p>It highlights that these provisions are set to be accompanied by the Criminal Justice Bill and a potential Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill. The Commission advises that the Committee may wish to consider either the introduction of a THB legislative guide or a single comprehensive piece of legislation to increase the accessibility and awareness of the crime.</p>	<p>legislative guide.</p>
<p><b>Northern Ireland Council for Ethnic Minorities</b></p>		<p>The Northern Ireland Council for Ethnic Minorities welcomes the recent developments in the area of human trafficking, however it is concerned that a piecemeal approach to legislative reform in this area will lead to a complex and potentially weak legal framework which could make it more difficult for law enforcement officials and legal practitioners to combat human trafficking and protect and support victims. In its oral evidence NICEM refers to the Greta report which addresses the consequences of having numerous pieces of legislation.</p>	<p>See above</p>



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		<p>NICEM also refers in its oral evidence to the primacy of human rights and the need to legislate for a human rights-based approach to trafficking. Again NICEM refers to the Greta report and the recommendations contained therein.</p> <p>_____</p> <p>NICEM highlights in its oral evidence the need for a three-pronged approach to human trafficking, namely the prosecution of trafficking and related offences, protection of victims and prevention of trafficking. In NICEM's view the current provisions in the Bill deal with the prosecution element but provisions relating to the protection of victims and prevention of trafficking are missing.</p> <p>_____</p>	<p>Noted. The Department will be writing to the Committee about the recommendations in the GRETA report. One is specific to Northern Ireland. This is that the PPS policy on prosecuting cases of human trafficking should be issued as soon as possible. This will be published before the end of the year.</p> <p>_____</p> <p>The draft provisions in the Criminal Justice Bill will create new offences that ensure the law in Northern Ireland complies with the criminal aspects of the EU Directive on Trafficking in Human Beings. Robust measures to support victims and activity to prevent trafficking are in place. Consideration is being given as to whether secondary legislation is required in relation to support.</p> <p>_____</p> <p>The Minister's letter to Lord Morrow on 4 October, which was copied to the Committee, sets out in detail the work being taken forward by the Department</p>
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			and others on 3 fronts – prevention, prosecution and protection.  <u>The Minister will respond to NICEM on its report in due course.</u>
		NICEM also refers to a report which analyses the current response to human trafficking in Northern Ireland and indicates that the Minister of Justice has been presented with a copy of the recommendations contained therein.	
	<b>National Society for the Prevention of Cruelty to Children</b>	The National Society for the Prevention of Cruelty to Children states in its submission that the human trafficking provisions within the Bill are welcome new safeguards which bring Northern Ireland into line with EU Directives on human trafficking by ensuring that those who seek to traffic adults or children across international borders are not immune from prosecution in Northern Ireland as well as addressing internal trafficking for the purposes of sexual exploitation.	Noted
<b>EU DIRECTIVE 2011/36/EU</b>	<b>Northern Ireland Human Rights</b>	The Northern Ireland Human Rights Commission (NIHRC) highlights in its submission that the EU Directive and the UN	Noted

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	<p><b>Commission</b></p>	<p>Protocol on the Trafficking of Human Beings require a comprehensive approach to the issue of human trafficking and encourages the Committee to keep this matter under review.</p> <p>The NIHRC also highlights that the EU Directive requires further implementation before compliance is achieved, particularly in the areas of victims services, protections for the child, and measures to address demand and trusts that the NI Executive is mindful of these obligations which require fulfilment by 6 April 2013. The Commission makes reference to its own scoping study published in 2009 in conjunction with the Equality Commission for NI and the Institute for Conflict Research on ‘The Nature and Extent of Human Trafficking in Northern Ireland’ which made a number of recommendations in this area.</p>	<p>A paper on compliance with the EU Directive has been sent to the Committee. The Department’s analysis on compliance will be published.</p>
<p><b>CARE in Northern Ireland</b></p>	<p>In its submission, CARE in Northern Ireland, while welcoming clauses 5 and 6, expresses its concern that there is, as yet, no reference to how Northern Ireland will make itself compliant with all the other parts of the Directive. It believes that the Northern Ireland Executive is acting as if these two</p>	<p>See comments above.</p>	

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		<p>changes are the only changes it need make in order to become compliant with the Directive. It is extremely concerned about the minimalism of this approach because the UK Government had suggested in the first instance that the UK did not need to opt in to the Directive. It emphasises that it is very important to make sure that proper rather than minimalist compliance is achieved.</p>	
<p><b>Northern Ireland Council for Ethnic Minorities</b></p>		<p>The Northern Ireland Council for Ethnic Minorities highlights that the EU Directive includes a wide range of provisions relating to investigation and prosecution of traffickers, prevention of human trafficking and the protection of victim's rights as well as the provision of support, including compensation, to victims, particularly child victims.</p>	<p>See comments above.</p>
<p><b>SCOPE OF THE BILL</b></p>			
<p><b>CARE in Northern Ireland</b></p>		<p>CARE in Northern Ireland states that the scope of the Bill is not clear. It highlights that the long title says the Bill is to 'amend the law relating to...human trafficking', and believes that this suggests that there could</p>	<p>The Department of Justice believes the NI Executive will be compliant with the Directive. It is, nonetheless, considering secondary legislation to strengthen the support for victims.</p>

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		<p>be a wide scope to tackle many of the issues related to trafficking from offences to providing support.</p> <p>It refers in its submission to the Second Stage debate on the Bill and the Minister of Justice's commitment to look at the Bill to consider what is within its scope and what is needed in policy work and in secondary legislation, and if there are further proposals for primary legislation. It also refers to the Protection of Freedoms Bill long title which included the words 'to make provision about the trafficking on people for exploitation' and the House of Lords debated amendments on including a legal advocate for trafficked children. CARE in Northern Ireland believes that this suggests that there could be scope to include wider human trafficking issues in the Bill.</p>	
<p><b>Northern Ireland Commissioner for Children and Young People</b></p>	<p>The Northern Ireland Commissioner for Children and Young People (NICCY) refers to its submission to the Department of Justice's consultation on amending the law to introduce the new trafficking offences. It highlights that the Department advised that there would be 'little scope to influence' the</p>	<p>See comments above.</p>	

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		<p>proposed legislative amendments due to the fact that they 'are required in order to comply with the EU Directive'. In its response to the consultation, NICCY stated that the obligation to create new criminal offences, in order to comply with the Directive, did not preclude the implementation of additional measures which would further progress the legislative and policy framework.</p>	
<p><b>LANGUAGE AND TERMINOLOGY</b></p>	<p><b>Northern Ireland Council for Ethnic Minorities</b></p>	<p>The Northern Ireland Council for Ethnic Minorities (NICEM) notes in its submission that clause 5 inserts a new section 58A into the Sexual Offences Act 2003 to create an offence where a person is trafficked for sexual exploitation into, within and out of countries outside the UK. It highlights that, in terms of the actions of an accused trafficker, Section 58A(1)(a) suggests 'arranges' or 'facilitates' will be enough to commit an offence. NICEM is of the view that this is not in line with the language of the Directive and NICEM is of the view that it may be open to litigation and could be the subject of judicial interpretation. NICEM recommends, to ensure that the Northern</p>	<p>(1) The new extra-territorial offence is drafted in a similar style to the existing sexual exploitation trafficking offences under the 2003 Act of trafficking into (section 57), within (section 58) and out of (section 59) the UK. These offences are to be interpreted using section 60 of the 2003 Act, which sets out certain relevant sexual offences for the purposes of trafficking for sexual exploitation. The relevant offences include sexual offences under the Sexual Offences (Northern Ireland) Order 2008 ("the 2008 Order"), sexual and violent crimes under Schedule 1 of the Criminal Justice (Children)</p>

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		<p>Ireland legislative framework is in line with the EU Directive, the words 'arranges or facilitates' are replaced with the following: <i>'The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'</i>.</p>	<p>(Northern Ireland) Order 1998 and the offence of taking indecent photographs of children contrary to article 3 of the Protection of Children (Northern Ireland) Order 1978. The intentional human trafficking acts in Article 2(1) of the Directive are covered.</p> <p>(2) The "arrange and facilitate" approach has been continued in England and Wales and has been incorporated into the new section 59A of the 2003 Act by section 109 of the Protection of Freedoms Act 2012. The Scottish approach is the same and can be found in section 22 of the Criminal Justice (Scotland) Act 2003, as amended by section 46 of the Criminal Justice and Licensing (Scotland) Act 2010. There is a consistent approach within the equivalent UK legislation.</p> <p>(3) There are no reported cases highlighting any problem with the interpretation of "arrange and facilitate" in dealing with prosecutions under the above legislation.</p>
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		<p>NICEM also recommends that, in accordance with Article 3 of the Directive, a clause is included to extend the offence of trafficking people for sexual exploitation to persons who may incite, aid, abet or attempt to commit the offence.</p> <p><u>NICEM raises the issue of sanctions for legal persons. It notes that clause 5(1)(3) of the Bill sets out the penalties for persons guilty of an offence but does not include penalties for legal persons, despite the fact they are covered by clause 5(1)(2)(e) of the Bill. NICEM highlights that Article 6 of the Directive suggests sanctions for legal</u></p>	<p>There is no need for the inclusion of such a clause. NI law, in similar manner to equivalent legislation in England and Wales and Scotland, contains statutory provisions which apply to all criminal offences. This relevant legislation is contained in:-</p> <p>(a) The Criminal Attempts and Conspiracy (Northern Ireland) Order 1983;</p> <p>(b) Section 4 of the Criminal Law Act (Northern Ireland) 1967 (Penalties for assisting offenders); and</p> <p>(c) Section 8 of the Accessories and Abettors Act 1861, which provides that a person who aids, abets, counsels or procures the commission of any indictable offence shall be punished as a principal offender.</p> <p><u>The 2003 Act and the 2004 Act refer to persons who commit the relevant offences. Clauses 5 and 6 of the Criminal Justice Bill make provision for the liability of persons who commit offences in countries outside the United</u></p>
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		<p>persons such as judicial winding-up and disqualification and suggests that it may be useful for the legislature to consider such options as the Bill should include sanctions against legal persons.</p> <hr/> <p>NICEM states in its submission that there are similarities between clauses 5 and 6 of the Bill and considers that the same recommendations should apply where relevant to ensure that national legislation reflects the language and intention of the Directive to guarantee effective implementation.</p>	<p>Kingdom. This legislation, which extends to NI, must be interpreted in accordance with the Interpretation Act 1978.</p> <p>A variety of interpretation definitions are set out in Schedule 1 to the Interpretation Act 1978. Schedule 1 (Words and expressions defined) includes the definition:</p> <p><i>"Person" includes a body of persons corporate or unincorporate."</i></p> <p>Where the 2003 Act and the 2004 Act refer to persons committing offences this includes companies. The Criminal Justice Bill is consequently compliant with the "legal persons" definition in article 5 and with article 6.</p> <hr/> <p>See above.</p>
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	<p><b>Police Service of Northern Ireland</b></p>	<p>The Police Service of Northern Ireland (PSNI) has recommended in its submission that there is consistency in the Bill in referring to 'human trafficking' rather than, at times, 'trafficking people'. The PSNI believes that this consistency would ensure that the Bill reflects accepted terminology in this area and avoid confusion with the separate offence of 'people smuggling'.</p>	<p>The Department notes that human trafficking is now a well understood terminology or description. Its use in the long title to the Bill provides a concise and easily understood description of the specific sexual and labour exploitation offences arising from the trafficking of human beings. The proposed PSNI approach could result in something less succinct in terms of draftsmanship and would not necessarily improve upon the existing use of the readily understandable generic description of "human trafficking". The existing use of "human trafficking" is not inconsistent with the provision of the amended offences in clauses 5 and 6 which deal with "trafficking".</p>
<p><b>DEFINITION OF EXPLOITATION</b></p>	<p><b>Disability Action</b></p>	<p>Disability Action believes that the definition of exploitation should be extended to include forced begging.</p>	<p>Forced begging constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004</p>

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	<p><b>Northern Ireland Council for Ethnic Minorities</b></p>	<p>The Northern Ireland Council for Ethnic Minorities (NICEM) highlights in its submission that clause 6 of the Bill refers to the notion of exploitation but it is not defined in the Bill as it stands. NICEM recommends that a definition be included to reflect Article 2(3) of the Directive: <i>‘Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs’.</i></p>	<p>The Department considers that there is a risk in being overly prescriptive and enshrining certain aspects in legislation as this can –</p> <ul style="list-style-type: none"> <li>• Limit flexibility in relation to dealing with individual cases;</li> <li>• Make it more difficult to respond quickly to changes in criminal behaviour; and</li> <li>• Could provide criminals with a means to work around the legislation.</li> </ul> <p>The Department sought views on including definitions in Northern Ireland legislation from the Public Prosecution Service (PPS). PPS has considered this from a prosecutorial perspective and has advised that the circumstances of a human trafficking case can vary greatly. The acts referred to in Articles 2.1 and 2.3 of the EU Directive would already be covered by the existing offences for England and Wales and NI. There may be cases where the circumstances of the trafficking are more subtle and there</p>
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		<p>In considering this point, NICEM recommends that Article 2(4) of the Directive, which provides that the consent of the victim shall be irrelevant where exploitation has taken place, should be taken into consideration.</p> <p>In its oral evidence NICEM also highlights that a definition of habitual residence is not included in the Bill.</p>	<p>may be no evidence of the means referred to in Article 2.1. PPS has noted that if Article 2.1 is included as a definition of trafficking or included in the definition of the offences then we may limit the offence and will therefore be unable to prosecute the offence of trafficking in cases where there is no evidence of the means contained in the definition.</p> <p>This is the position and is covered in the PPS policy.</p> <p>The term "habitual residence" occurs in a number of Conventions and Directives and is not defined in them. The Human Trafficking Directive contains no definition.</p> <p>Case law is clear that it should be given its ordinary and natural meaning having regard to the facts of each case.</p>
<p><b>CARE in Northern Ireland</b></p>	<p>CARE in Northern Ireland asks in its submission for consideration to be given to the extension of the definition of exploitation</p>	<p>See comments above in relation to definitions and offences.</p>	

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		<p>within the Asylum and Immigration Act 2004 to meet the requirements of the European Directive on Human Trafficking Articles 2(1) to 2(4) to include forced begging and consent to be irrelevant where coercion, threats or fraud etc. is used to achieve the consent for the purposes of exploitation. It highlights that this issue is addressed in Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill.</p>	
<p><b>EXTENSION OF JURISDICTION</b></p>	<p><b>Northern Ireland Policing Board</b></p>	<p>The Northern Ireland Policing Board (NIPB) raises an issue in its submission on whether it is within the Assembly's legislative remit to create an offence in respect of all British citizens, subjects and overseas territories citizens, particularly where they have no connection with Northern Ireland and no element of the unlawful act takes place within Northern Ireland.</p> <p><u>The NIPB states that, as currently drafted, the Bill appears to mean that if a British citizen living in London, not connected in any way with Northern Ireland, trafficks a</u></p>	<p>The new offence involves trafficking outside the United Kingdom committed in whole or in part within Northern Ireland. POFA 2012 relates to similar trafficking activity undertaken in England and Wales. Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010 has already established similar Scottish jurisdiction in respect of extra-territorial trafficking offences.</p> <p><u>The Criminal Justice Bill makes provision for jurisdiction in respect of offenders who are habitually resident in</u></p>

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		<p>person for exploitation purposes within Spain, they will be committing an offence under the law of Northern Ireland. If similar legislation is introduced in England and Wales, it believes that the same person living in London, trafficking in Spain, will also have committed an offence under the law of England and Wales and could thus, in theory, be prosecuted twice within the United Kingdom, albeit within two different legal jurisdictions, for the same unlawful act.</p> <p>The NIPB questions whether the new offences should be limited to apply to all persons who at the time of the offence are habitually resident within Northern Ireland, to bodies incorporated under the law of a part of the United Kingdom with a registered office address in Northern Ireland or to situations where part of the chain of events amounting to the offence take place within Northern Ireland e.g. an email making arrangements is sent from within Northern Ireland.</p>	<p>Northern Ireland in accordance with article 10(2)(c) of the Directive 2011/36/EU, which is the same as the approach already adopted in Scotland.</p>
<p><b>Northern Ireland Human</b></p>	<p>The Northern Ireland Human Rights Commission (NIHRC) highlights in its</p>	<p>The new offence involves trafficking outside the United Kingdom committed</p>	

See comments above.

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	<p><b>Rights Commission</b></p>	<p>submission that Article 10(1) (b) of EU Directive requires the UK to establish jurisdiction over offences concerning trafficking in human beings (THB) where the offender is a UK national, including where the exploitation occurs outside the UK.</p> <p>The Commission welcomes additions by the Bill of section 58A to the Sexual Offences Act 2003 and of subsections 3A, 4A and 4B to the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which introduce liability for UK citizens who arrange or facilitate trafficking for the purposes of sexual exploitation or for other exploitation outside of the UK. The Commission also welcomes that this extension of jurisdiction includes persons habitually resident in Northern Ireland at the time of the offence and advises that the Executive must notify the European Commission of this aspect of the extension as required by Article 10(2) of the EU Directive.</p>	<p>in whole or in part within Northern Ireland. POFA 2012 relates to similar trafficking activity undertaken in England and Wales. Section 46 of the Criminal Justice and Licensing (Scotland) Act 2010 has already established similar Scottish jurisdiction in respect of extra-territorial trafficking offences.</p> <p>Noted</p>
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	<p>The NIHRC also highlights that Article 10(1) (a) of the EU Directive requires the UK to establish jurisdiction over offences concerning THB where the offence is committed 'in whole' within the UK. Similarly, Article 2 of the Council of Europe Convention on Action Against Trafficking in Human Beings states the scope of the Convention to apply to 'all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime'. In this regard, the Commission welcomes the amendments made by the Bill to section 4(2) of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, which extends the offence of trafficking for other exploitation to apply where a person arranges or facilitates the offence within the UK without the need to demonstrate that the person held the belief that the victim was first trafficked into the UK.</p> <p>The NIHRC raises an issue around the requirement in Article 10(1) (a) of the EU Directive for the UK to establish jurisdiction over offences concerning THB where the offence is committed 'in part' within the UK.</p>	<p>Noted</p> <p><u>The POFA 2012 provisions comply with the minimum mandatory compliance requirements in article 10(1) of the Directive 2011/36/EU.</u></p> <p>The provisions in the Criminal Justice Bill will make these changes for Northern Ireland and will also <u>implement the discretionary changes set</u></p>
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		<p>The Commission notes that sections 109 and 110 of the Protection of Freedoms Act 2012, which extend to England &amp; Wales, contain provision that a non-UK national will be culpable for the offence of trafficking for sexual, labour and other exploitation under the legislation if 'any part of the arranging or facilitating takes place in the UK'.</p> <p>The NIHRC highlights that an equivalent level of jurisdiction has not been contained in the Criminal Justice Bill and provides an example whereby a non-UK national (who is not habitually resident in Northern Ireland), person 'A' whilst in Northern Ireland, arranges via email, telephone or other personal communication for the trafficking of person 'B' from State 1 ('India') to State 2 ('Lebanon'), it appears that person 'A' could be prosecuted in England &amp; Wales but not in Northern Ireland. The NIHRC advises the Committee that it may wish to seek clarification on the application, if any, of sections 109 and 110 in Northern Ireland, and whether or not the outlined scenario is covered by the Bill.</p>	<p>out in Article 10(2) of the Directive in that the offence will extend to habitual residents and bodies incorporated under the law of a part of the United Kingdom.</p> <p><u>This example is not accurate, and suggests that this trafficking outside the United Kingdom would now be covered by the amendments made in England and Wales under sections 109 and 110 of the Protection of Freedoms Act 2012, but not by the Criminal Justice Bill.</u></p> <p>The mandatory requirements in article 10 of the Directive are that Member States will take all necessary measures to establish jurisdiction over article 2 and 3 offences where:-</p> <p><i>"(a) the offence is committed in whole or in part within their territory; or</i>  <i>(b) the offender is one of their nationals."</i></p> <p>The scope of the amended England and Wales offences, when commenced, will cover the pre-existing offences of</p>
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	<p>trafficking into, within and out of the United Kingdom and the new extended extra - territorial offence of a UK national, regardless of where the arranging or facilitating of the trafficking takes place, trafficking a victim into, within or out of a country outside the UK.</p> <p>Article 10(2) of the Directive permits Member States to provide for an optional discretionary extension of extra-territorial jurisdiction, where persons habitually resident in their country commit trafficking offences in foreign countries. The English legislation has only implemented the basic article 10(1) mandatory obligations. As has already occurred in Scotland since 2010, the Criminal Justice Bill creates NI jurisdiction over British citizens, companies incorporated under the law of any part of the UK, and persons habitually resident in NI, where any of these parties intentionally arranges or facilitates the exploitation of a victim in a country outside the UK.</p>

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			<p>In the example above, the hypothetical trafficker could not be dealt with under either the narrower E&amp;W or our wider habitual resident provisions. This foreign national, not committing any part of the offence in NI, might perhaps be subject to the criminal jurisdiction of his country where it is a Member State which has signed up to the Directive. Alternatively the legal authorities in India or in Lebanon would have certain powers in respect of criminal offences committed within their territories.</p>
	<p><b>CARE in Northern Ireland</b></p>	<p>CARE in Northern Ireland highlights in its submission that the changes to extraterritorial powers were enacted for England and Wales through the Protections of Freedoms Act 2012 and points out that the Department of Justice has taken a different approach to bringing in these requirements to that adopted within the Protection of Freedoms Act 2012. CARE in Northern Ireland is not clear on whether there are significant benefits to one system over another but it highlights that it does mean that trafficking legislation within the UK is becoming more divergent.</p>	<p>We note that there is a concern that the different approaches between Northern Ireland and England and Wales may be confusing for victims. If that does arise in any particular, we consider that this can be explained to the victim by their legal representatives. The clauses in the Criminal Justice Bill, although drafted in a different style, cover the same range of criminal activities as in England and Wales and mirror the additional provisions introduced in Scotland which provide for extra-territorial jurisdiction over persons</p>

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		<p>CARE in Northern Ireland raises a practical point of implementation of extraterritorial jurisdiction in relation to how it will be decided where a UK citizen who has committed a trafficking offence abroad would be prosecuted in the UK given that there are different offences in the different UK jurisdictions, and in particular what factors will make it more likely that an offence is prosecuted in Northern Ireland.</p>	<p>habitually resident in Northern Ireland at the time of committing the offence outside the United Kingdom and companies incorporated under the law of a part of the United Kingdom.</p> <p>That would be a matter for the prosecuting authorities in each jurisdiction to consider.</p> <p>The provisions of the Criminal Justice Bill provide for jurisdiction over British citizens, persons habitually in Northern Ireland or companies registered in the UK in respect of sexual trafficking or labour exploitation activities undertaken by them in countries outside the UK.</p> <p>In particular, clause 5 of the Criminal Justice Bill inserts into the Sexual Offences Act 2003 a new section 58A ("Trafficking outside the UK for sexual exploitation").</p> <p>Clause 6 of the Bill introduces a similar extension of jurisdiction in what will be section 4(3A) ("Trafficking people for other exploitation") of the Asylum and</p>
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			<p>Immigration ( Treatment of Claimants, etc) Act 2004 (" the 2004 Act"). These changes comply with the mandatory extension of jurisdiction required in respect of offenders who are nationals of a Member State (see article 10(1)(b) of the Directive 2011/36/EU (" the Trafficking Directive")) and exercise the <u>discretionary option</u> to extend jurisdiction to companies established in and habitual residents living in the Member State ( see article10 (2) (a) to (c) of the Trafficking Directive).</p>
<p><b>TRAINING AND INVESTIGATIVE TOOLS</b></p>	<p><b>CARE in Northern Ireland</b></p>	<p>CARE in Northern Ireland highlights that Northern Ireland may already be complying with the provisions under the Directive's Articles 9(3) and 9(4) regarding training and the availability of proper investigative tools at a policy level. However, it raises the issue that if this is not contained in the legislation, there is a risk that these services are vulnerable to cuts. It refers to the recently published GRETA report which stressed the need for training across the board in dealing with trafficking victims, including the importance of ensuring that all First Responders are fully trained in the</p>	<p>It is not considered that this needs to be on a statutory basis. Training and investigative tools are already available.</p> <p>The Organised Crime Task Force's (OCTF) Immigration and Human Trafficking Subgroup is to undertake a mapping exercise in conjunction with other stakeholders and NGOs on human trafficking related training.</p>

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		<p>processes for making a referral to the National Referral Mechanism</p> <p>CARE in Northern Ireland notes that Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill covers these issues.</p>	<p>Noted. The Minister of Justice has responded to Lord Morrow's consultation on his Private Member's Bill and a copy of the letter has been sent to the Committee.</p>
	<p><b>Disability Action</b></p>	<p>Disability Action states in its submission that the training and investigative tools for police and prosecutors need to be improved.</p>	<p>The PSNI has recently assisted in the development and introduction of an online training package, targeted at frontline officers and staff to assist in the recognition of signs of trafficking. Over 2800 PSNI officers and staff have successfully completed the training. In addition, PSNI's Organised Crime Branch has introduced and delivered bespoke training to a number of detectives to enhance their investigative skills and ensure that officers know how to engage voluntary and statutory partners in assisting rescued victims.</p> <p>Training has been provided to all prosecutors on human trafficking for sexual exploitation, internally and with input from UKBA. It is anticipated that further training will be provided when</p>

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			<p>the PPS Policy on Prosecuting cases of Human Trafficking is issued.</p> <p>The Organised Crime Task Force's (OCTF) Immigration and Human Trafficking Subgroup is to undertake a mapping exercise on human trafficking related training.</p>
<p><b>CONVICTIONS, DISPOSALS AND SENTENCING</b></p>	<p><b>Northern Ireland Association for the Care and Resettlement of Offenders</b></p>	<p>The Northern Ireland Association for the Care and Resettlement of Offenders seeks clarification in its submission of the disposals that will be available to the courts for those found guilty of offences under the new legislation.</p>	<p>The disposals available to the courts for the new human trafficking offences are as follows -</p> <p>1. A person guilty of an offence under section 58A of the Sexual Offences Act 2003 will be liable on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both; on conviction on indictment, to imprisonment for a term not exceeding 14 years.</p> <p>Trafficking for sexual exploitation is also a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order and so, where</p>

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			<p>the court considers that the offender poses a risk of serious harm, can attract either an indeterminate or extended custodial sentence, with future release determined by the Parole Commissioners.</p> <p>2. A person guilty of an offence under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 as amended, will be liable on summary conviction, to a term of imprisonment not exceeding six months or a fine not exceeding the statutory maximum or both and, on conviction on indictment, imprisonment for a term not exceeding 14 years, to a fine or to both.</p>
	<p><b>Mindwise</b></p>	<p>In its submission Mindwise states that it would welcome accompanying legislation for enhanced sentencing where the victim is a mentally vulnerable person. It highlights that the exportation of any person is to be abhorred, but should the victim be exploited because they are young or mentally vulnerable, then this should attract a greater sanction, thus sending out a message of support in the justice system for</p>	<p>In relation to such victims, section 4 (4)(d) of the Asylum and Immigration (Treatment of Offenders etc) Act 2004 provides that a person is exploited if he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that— (i) he is mentally or physically ill or disabled, he is young or he has a family</p>



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		<p>those weaker members of society.</p> <p><u>Mindwise refers to the 2011 Trafficking in Persons Report - United Kingdom which</u></p>	<p>relationship with a person, and (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.</p> <p>Section 60 of the Sexual Offences Act 2003 provides that a relevant offence under sections 57 to 59 of the Act means, inter alia, an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008. Part 4 of that Order makes provision for sexual offences against a person with a mental disorder.</p> <p>Sentencing Guidelines already make provision for the consideration of factors relevant to both sexual and labour exploitation offences which indicate a higher degree of culpability on the part of the offender. These include offences motivated by or demonstrating hostility based on a victim's disability or presumed disability, the deliberate targeting of vulnerable victims and the abuse of power or a position of trust.</p>
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		<p>highlights that authorities have not convicted an offender for human trafficking in Northern Ireland, Wales, or Scotland and provides examples of sentences in England where the average sentence for traffickers convicted under its Sexual Offences Act was 3 years 8 months imprisonment and for those convicted under other laws the average was 2 years 6 months.</p>	<p><u>Decisions to prosecute in Northern Ireland</u>                  Between January 2012 and 1 October 2012, the PPS received 16 cases following investigation for human trafficking involving 25 suspects.                   At 1 October, decisions had been taken in 14 cases involving 22 suspects.</p> <p><u>Convictions for human trafficking</u>                  There have been two convictions for human trafficking in Northern Ireland this year. On 25 April 2012 Matyas Pis 2012 NICC 14 was sentenced to 3 years imprisonment on a trafficking charge; 2 years imprisonment on two counts of controlling prostitution charges, to run concurrently and 18 months, concurrent to the other sentences on assisting in the management of a brothel.</p> <p>On 6 July 2012 three defendants were sentenced in the case of R v Rong Chen, Simon Dempsey and Jason Owen Hinton [2012] NICC 26. The first defendant Rong Chen was sentenced to 7 years imprisonment for the offence of</p>
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			<p>trafficking, along with various other offences. Simon Dempsey, was sentenced for two counts of aiding and abetting the control of prostitution for gain and received a concurrent sentence of 9 months imprisonment on each count; for 3 counts of entering into an arrangement to control criminal property contained, concurrent sentences of 3 months imprisonment were imposed on each count. Jason Owen Hinton was convicted of two counts of aiding and abetting the control of prostitution and received two concurrent community service orders requiring 220 hours of unpaid work</p>
<p><b>CARE in Northern Ireland</b></p>	<p>CARE in Northern Ireland recommends that the aggravating factors listed under Article 4(2) of the European Directive (committed against a particularly vulnerable victim, endangering the life of the victim etc.) should be specified in the legislation governing Northern Ireland in order for it to be compliant with the Directive, rather than being provided in sentencing guidelines. It highlights that Lord Morrow's Human Trafficking and Exploitation (Further</p>	<p>CARE in Northern Ireland recommends that the aggravating factors listed under Article 4(2) of the European Directive (committed against a particularly vulnerable victim, endangering the life of the victim etc.) should be specified in the legislation governing Northern Ireland in order for it to be compliant with the Directive, rather than being provided in sentencing guidelines. It highlights that Lord Morrow's Human Trafficking and Exploitation (Further</p>	<p>The Magistrates' Courts sentencing guidelines set out general principles of sentencing which detail general aggravating and mitigating factors. In addition, the Crown Court guidance issued by Judge Burgess in 2012 following the R v Pis case (NICC 14), set out aggravating factors in relation to offences for human trafficking for sexual exploitation. The Department considers that these are matters which should be</p>

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<p>Provisions and Support for Victims) Bill covers this issue.</p>	<p>considered by the trial judge taking into consideration the circumstances of each individual case. The Sentencing Guidance states that human trafficking is 'serious offending behaviour, which society as a whole finds repugnant, and a financial or community penalty would rarely be an appropriate disposal.' In relation to sentencing, it states that 'the starting point for offences of trafficking for sexual exploitation should be a custodial sentence.'</p> <p>As yet, no cases have come before the Northern Ireland Crown Court in relation to trafficking for labour or other exploitation but the Lord Chief Justice has put procedures in place to identify such cases if and when they do in order that sentencing guidance can be issued.</p> <p>Vulnerable victims, including children, are generally treated by the courts as being an aggravating feature of any given crime (see, for instance, paragraphs 70 – 71 in R v Chen). Moreover, courts will sentence in accordance with the legal obligations</p>
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		<p>In its oral evidence CARE in Northern Ireland encourages consideration of the 'Swedish model', as proposed in Lord Morrow's Private Members' Bill, which makes it illegal to purchase sexual services.</p>	<p>placed upon them.</p> <p>The Department's attention has been drawn before to what is said to be the success of a measure introduced in Sweden which criminalised prostitution and which, it is claimed, has led to a reduction in prostitution. However, the Department notes that there are also reports that reoffending occurs despite the ban and an official from the Swedish Human Trafficking Unit is quoted in the Belfast Telegraph (22 August 2012) as describing the policy as a 'failure'. It is also worth noting that legislation was not the only step taken; a significant part of Sweden's approach involved strategies (with the investment of resources) to support women to exit prostitution. Furthermore, the Swedish legislation was brought about following widespread public support and has been the product of its culture. Other countries have taken different approaches to prostitution, ranging from banning prostitution or associated activities, through to decriminalisation and regulation.</p>
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			<p>The Department is not convinced that such an offence would be enforceable or effective as a deterrent, and is concerned that it risks driving prostitution underground and putting vulnerable women at greater risk of exploitation and harm. Linking trafficking and prostitution in this way also carries the risk of distracting the attention (and potentially, resources) from one issue to the other. Nevertheless, the Minister has asked officials to look at the existing offence to see if any changes are required.</p>
	<p><b>Disability Action</b></p>	<p>Disability Action highlights in its submission that courts should be allowed to take aggravating factors into consideration, including the disability of the victim, when passing sentence.</p>	<p>Section 4 (4)(d) of the Asylum and Immigration (Treatment of Offenders etc) Act 2004 provides that a person is exploited if (and only if) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that— (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and</p>

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	<p>(ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.</p> <p>Section 60 of the Sexual Offences Act 2003 provides that a relevant offence under sections 57 to 59 of the Act means, <i>inter alia</i>, an offence under any provision of the Sexual Offences (Northern Ireland) Order 2008. Part 4 of that Order makes provision for sexual offences against a person with a mental disorder.</p> <p>Crown Court sentencing guidance concerning aggravated factors in sexual exploitation trafficking offences is now clearly set out in the recent case of <i>R v Matyas Pis</i> [2012] NICC 14 and includes consideration of the degree to which a victim is exploited or controlled.</p> <p>Vulnerable victims, including children, are generally treated by the courts as being an aggravating feature of any given crime (see, for instance,</p>

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	<p>paragraphs 70 – 71 in R v Chen).          Moreover, courts will sentence in accordance with the legal obligations placed upon them.</p> <p>The Magistrates Courts Sentencing Guidelines note that aggravating features which may occur in any offence may include that the offence was committed in the context of 'hostility'.</p> <p>Article 2 of the Criminal Justice (No.2) (NI) Order 2004 provides that 'hostility' shall be treated as an aggravating factor in relation to the seriousness of the offence. 'Hostility' in this context is defined as:</p> <ul style="list-style-type: none"> <li>(i) at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence hostility based on-             <ul style="list-style-type: none"> <li>(d) a disability or presumed disability of the victim; or</li> <li>(ii) the offence is motivated (wholly or partly) by hostility towards-                 <ul style="list-style-type: none"> <li>(d) persons who have a disability or a particular disability.</li> </ul> </li> </ul> </li> </ul>



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		<p>Evangelical Alliance expresses concern in its submission about the proposed sentence an offender could receive under summary conviction for the offences under trafficking people for exploitation in the Bill.</p> <p>It highlights that in the consultation document, it was proposed that ‘someone found guilty of either offence would be liable on summary conviction to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both’. However it notes that in its current form the Bill would reduce this to a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum.</p>	<p>In addition, the Guidelines note that further aggravating factors may include –</p> <ul style="list-style-type: none"> <li>• the deliberate targeting of vulnerable victims;</li> <li>• the victim was particularly vulnerable.</li> </ul> <p>The Department has apologised to the Committee for the error in the consultation document. This should have advised that the offence would be liable on summary conviction to a term not exceeding 6 months, to a fine not exceeding the statutory maximum or to both.</p> <p>The sentence of up to 6 months on summary conviction for human trafficking offences here is consistent with that available in England &amp; Wales and Scotland. There is provision in England and Wales to extend the sentencing powers in the Magistrates’ Courts in England and Wales from 6 months to 12 months. <u>However</u>, this</p>
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		<p>Evangelical Alliance is concerned that, rather than facing a maximum of 12 months in prison and the prospect of a fine, an offender summarily convicted under this Bill would now only face a maximum of 6 months in prison or a fine. It appreciates that trafficking is a complex offence and those involved will have varying degrees of criminal responsibility however it is concerned that someone convicted of a trafficking offence could be given solely a fine which seems disproportionately lenient given the gravity of the crimes and human</p>	<p>has not been commenced (nor, we understand, is it likely to be in the immediate future), consequently the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 provide for the penalty of 6 months, as is the case in Northern Ireland.</p> <p>The Minister is considering whether there is a case to make these offences indictable only, which would mean that offences would be heard in the Crown Court, where the maximum term of imprisonment is 14 years.</p> <p>Sentencing in any individual case is a matter for an independent judiciary. Mandatory minimum sentences allow no room for discretion. They make no allowance for the exceptional case, and there is always the possibility of such a case. Minimum sentences can have unintended consequences.</p>
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		<p>rights abuses concerned.</p> <p>Evangelical Alliance refers in its submission to the tough approach taken by the Swedish Government to sentencing those convicted of trafficking:</p> <p>“Any person who uses coercion or deception, exploits someone else’s vulnerable situation or, by any other such undue or improper means, recruits, transports, houses, receives or takes any such action involving a person, and thereby takes control of that person, with a view to that person being exploited for casual sexual relations or in some other way being exploited for sexual purposes, shall be sentenced to at least two and at most ten years’ imprisonment for trafficking in human beings.” This means that in Sweden the minimum someone would face, on conviction of a sex-trafficking offence, would be 2 years imprisonment. Evangelical Alliance suggests that a minimum custodial sentence fixed in legislation, not merely in sentencing guidelines, could be an effective deterrent to those seeking to profit by sex trafficking here. It also suggests that this is coupled with a mandatory period on the sex offenders register for those convicted of any</p>	<p>Sentencing guidance was set out by His Honour Judge Burgess in the case of Rv Matyas Pis. In relation to trafficking for sexual exploitation, this notes that human trafficking is serious offending behaviour, which society as a whole finds repugnant, and a financial or community penalty would rarely be an appropriate disposal; and that the starting point for sentencing for offences of trafficking for sexual exploitation should be a custodial sentence.</p> <p>The Department notes that on 18 October when giving evidence to the Committee on the Criminal Justice Bill, Assistant Chief Constable Hamilton advised that minimum sentencing ‘has a limited contribution to make in minimising harm and reducing risk. These offences will be added to the schedule of those referable by the Director of Public Prosecutions to the Court of Appeal as unduly lenient.</p>
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		<p>offence related to sex trafficking.</p> <p>Evangelical Alliance would like to see robust measures against human traffickers matched by a consistent policy when dealing with the users. It would encourage debate and consideration of the ‘Swedish model’ as proposed in Lord Morrow’s Private Members’ Bill, namely outlawing the purchase of sexual services.</p> <p>Alternatively it highlights that another approach would be to change the offence of ‘purchasing sexual services from a prostitute subjected to force’ from a summary offence to a hybrid offence. This would give the Public Prosecution Service greater flexibility in terms of timescale, court of prosecution and greater sentencing powers. It states that even a relatively short custodial sentence and spell on the sex offenders register could be a very effective deterrent to reduce the demand for sex trafficking.</p>	<p>See Department’s response in relation to comments about the Swedish model made by CARE.</p> <p>The Minister has asked officials to look at the existing offence to see if any changes are required in terms of timescale.</p> <p>Prostitution offences do not attract notification under the Sexual Offences Act 2003.</p>
	<p><b>Northern Ireland Council for Ethnic Minorities</b></p>	<p>In its oral evidence the Northern Ireland Council for Ethnic Minorities expresses concern about the length of sentences attached to trafficking offences.</p>	<p>Article 4.2 of the EU Directive requires that Member States shall take the necessary measures to ensure, in certain circumstances set out in the</p>

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			<p>Article, that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment. The maximum term of imprisonment in Northern Ireland under provisions in the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 is 14 years.</p> <p>In addition, trafficking for sexual exploitation is also a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order and so, where the court considers that the offender poses a risk of serious harm, can attract either an indeterminate or extended custodial sentence, with future release is determined by the Parole Commissioners.</p>
	<p><b>Committee for Justice</b></p>	<p>During the oral evidence session on 20 September, the Chairman of the Committee for Justice questioned whether the Department had given any consideration to having a mandatory minimum custodial sentence.</p>	<p>See Department's response above in relation to comments made by Evangelical Alliance.</p>

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<b>PROSECUTION</b>	<b>CARE in Northern Ireland</b>	<p>CARE in Northern Ireland highlights in its submission that the EU Directive mandates that proceedings should not be dependent on the reporting or accusation of the victim, and that proceedings should be able to continue if the victim withdraws their statement (Article 9(1)). Given the circumstances and difficulties faced by most trafficking victims, CARE in Northern Ireland believes that these are key provisions to ensure improvements in the number of successful convictions, but points out that they are not set out in the Bill.</p>	<p>Article 8 of the Directive requires that 'Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.' The Public Prosecution Service (PPS) has advised that it will apply the 'test for prosecution' in all cases referred to it by police regardless of whether the victim reports the offence, makes a statement or withdraws a statement. The 'evidential' and 'public interest' tests will be applied and if both are passed prosecution will be initiated or continued. The statutory obligations placed on the PPS by the Justice (Northern Ireland) Act 2002 require public prosecutors to review each case received from the investigator in</p>

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<p>accordance with the Code for Prosecutors to determine whether criminal proceedings should be instituted or, where criminal proceedings have been instituted, whether they should continue. The PPS Policy on Prosecuting Cases of Human Trafficking which they have been consulting on and which will be published early in 2013, explains that the PPS cannot provide blanket immunity from prosecution for victims of human trafficking. Every case must be considered on its merits.</p>		
<p>The Policy explains that PPS cannot provide blanket immunity from prosecution for victims of human trafficking. Every case must be considered on its own merit and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor</p>		

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			<p>mitigating <u>against</u> prosecution.</p> <p>The PSNI are required under section 32 of the Police Act (Northern Ireland) 2000 to investigate if they suspect that a criminal offence has occurred.</p> <p>Resources for investigation and prosecution are in place. None of the law enforcement agencies have advised the Department that provision on a statutory basis would aid the investigation or prosecution processes or is required on a statutory footing.</p>
<p><b>Northern Ireland Council for Ethnic Minorities</b></p>	<p>In its submission the Northern Ireland Council for Ethnic Minorities (NICEM) acknowledges that the Public Prosecution Service is currently consulting on a policy relating to prosecution guidelines and NICEM intends to submit a response to that process. However, in relation to prosecution, NICEM suggests that it may be necessary to amend the legal framework as the EU Directive calls for the non-prosecution of victims, which is currently not possible due to the Justice (Northern Ireland) Act 2002.</p>	<p>This is not correct. See above.</p> <p>Also the PPS policy includes reference to the case of R v LM [2010] EWCA 2327 in which the court stated that prosecutors must consider the public interest in prosecution when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled to commit.</p>	



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		<p>NICEM also draws attention to the other international instruments that Northern Ireland is bound by in terms of its efforts to combat trafficking i.e. the Council of Europe Convention on Convention on Action against Trafficking in Human Beings 2005 and the Protocol to the United Nations Convention against Transnational Organised Crime and recommends that the legislature bears these in mind.</p>	<p>Noted</p>
<p><b>National Society for the Prevention of Cruelty to Children</b></p>		<p>The National Society for the Prevention of Cruelty to Children (NSPCC) highlights in its submission that the Public Prosecution Service is currently consulting on its 'Policy for Prosecuting Cases of Human Trafficking' in which it proposes to work closely with the police, other colleagues in the criminal justice system and the voluntary sector to identify ways to increase disruption, prevention, investigation and prosecution as well as improving victim and witness care and protection. The NSPCC states that non-governmental organisations will often have greater experience of victims and their</p>	<p>The recently announced OCTF Engagement Group on Human Trafficking, will look at how the Department can work with NGOs in a number of ways, including awareness raising, training and support for victims. This group will allow NGOs to share their valuable experience and knowledge with the Department, statutory bodies and other NGOs.</p>

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		<p>differing needs and that a criminal justice route is not the only way of responding to trafficking; criminal (and civil) law may need to be used in conjunction with support services for victims. It believes that the proposed legislative provisions will strengthen further the inter-agency approach to tackling the issue of trafficking.</p>	
<p><b>PROTECTION, ASSISTANCE AND SUPPORT FOR VICTIMS</b></p>	<p><b>CARE in Northern Ireland</b></p>	<p>CARE in Northern Ireland believes that adequate protection for victims of trafficking during the investigation and prosecution of an offence should be enshrined in the legislation, including amendments to the Criminal Evidence (Northern Ireland) Order 1999 to ensure ‘special measures’ for trafficking victims acting as witnesses (Article 12(4)). In its submission, it refers to the recently published GRETA report which urged action to protect victims during the pre-trial and court proceedings and highlights that Lord Morrow’s Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill covers this issue.</p>	<p>Article 5(4) of the 1999 Order provides that complainants of sexual offences (including in circumstances of human trafficking) who are giving evidence are considered to be intimidated witnesses. Victims of labour and other exploitation offences set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc Act 2004 (“section” 4 victims) can be <u>considered</u> for special measures assistance by the court under the current legislation. The background to the Article 5(4) automatic eligibility provision is that, when giving evidence in sexual offences, complainants often have to talk about very personal and intimate details. The Department considers that it is not appropriate to</p>

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		<p>It also raises the issue of support for victims. CARE in Northern Ireland understands that support is being provided by the Migrant Helpline and Women's Aid, but it is not clear whether this support is available to children. It is concerned that without placing the Article 11 obligations to provide assistance and support to victims on a statutory footing, there is a risk of non-</p>	<p>create a hierarchy of victims and offences and that eligibility should be based on an individual assessment of each case.</p> <p>Current measures will however be further enhanced when the DoJ amends the "Achieving Best Evidence in Criminal Proceedings" Guidance to specify human trafficking victims as falling within the definition of "intimidated".</p> <p>DOJ also plan to include a specific section on human trafficking victims in guidance on working with intimidated witnesses which will be brought forward in 2013.</p> <hr/> <p>Recovered child victims of trafficking and those suspected of being victims of trafficking are deemed to be "children in need" under the Children (NI) Order 1995 and therefore the responsibility for provision of protection, care and support to these children, including access to</p>
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		<p>compliance, should any programmes be withdrawn. It refers to the recently published GRETA report which contains recommendations on the need for clear standards for care and assistance for victims of trafficking. It also highlights that Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill covers this issue.</p>	<p>health and social care, falls to HSC Trusts. We have passed a copy of the paper from CARE to DHSSPS.</p>
	<p><b>Disability Action</b></p>	<p>Disability Action highlights that better support should be provided to victims as proposed in Lord Morrow's consultation paper on Proposed Changes in the Law to Tackle Human Trafficking.</p>	<p>There is already provision, funded by the DOJ, for support for victims during the recovery and reflection period. The range of support provided is set out in the Minister's letter to Lord Morrow which has been copied to the Committee. The Department is considering, in conjunction with others, whether further steps are necessary in relation to victim support to ensure compliance with Article 11 of the EU Directive, including secondary legislation.</p> <p>For recovered adult victims beyond the recovery and reflection period, the arrangements are set out in the guidance on "Arrangements for the</p>

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				Welfare and Protection of Adult Victims of Human Trafficking”, which was published recently and which was copied to the Committee.
<b>TRAFFICKING CHILDREN</b>	<b>Northern Ireland Commissioner for Children and Young People</b>	The Northern Ireland Commissioner for Children and Young People (NICCY) highlights in its submission that the safeguarding and promotion of the rights and best interests of separated children and young people subject to immigration control in Northern Ireland is an important issue for the Commissioner. It believes that the risk of trafficking of the small number of separated children subject to immigration control in Northern Ireland should not be considered separately from the issue of the complex immigration processes to which these children are subject. NICCY highlights in its submission that it will shortly be commissioning a focused piece of research in the area of separated children subject to immigration control.	Recovered child victims of trafficking and those suspected of being victims of trafficking are deemed to be “children in need” under the Children (NI) Order 1995 and therefore the responsibility for provision of protection, care and support to these children, including access to health and social care, falls to HSC Trusts. We have passed a copy of the paper from NICCY to DHSSPS.	
	<b>National Society for the Prevention of</b>	The National Society for the Prevention of Cruelty to Children (NSPCC) refers in its submission to the Policy and Practice		Awareness of human trafficking was highlighted by the BlueBlindfold

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<p><b>Cruelty to Children</b></p>	<p>briefing ‘Separated Children and Child Trafficking in Northern Ireland’ which highlights the findings of a scoping study it undertook in September 2011 in partnership with Barnardo’s. The study showed that, while the incidence of trafficked children in Northern Ireland is small, it is important to recognise this can be a hidden problem and difficult to identify. The NSPCC refers to research which indicates that ‘there can be a lack of awareness by the general public and some practitioners which is enhanced by a culture of disbelief’. However, if this is addressed, more cases of child trafficking can be identified (Pearce et al, 2009). The Policy and Practice briefing recommended that professionals who come into contact with separated/trafficked children in Northern Ireland should be trained to understand and effectively respond to their needs and that awareness-raising, embedding knowledge and building professionals’ confidence about the issue of separated children, and child trafficking in particular, is vital for effective safeguarding. It also recommended that this should apply to those in the criminal justice system as well as professionals in education, social</p>	<p>campaign which was re-launched last year.                  The OCTF also developed a multi-lingual “Visitor or Victim?” leaflet and poster targeted at potential victims. These are displayed at key places where victims might be, including ports, main railway stations, health centres and doctors’ surgeries.</p> <p>Further work on awareness raising will be considered by the Human Trafficking Engagement Group.</p> <p>Responsibility for provision of protection, care and support to children who are trafficked, including access to health and social care, falls to HSC Trusts. We have passed a copy of the paper from NSPCC to DHSSPS.</p>
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	<p><b>CARE in Northern Ireland</b></p>	<p>services, health and the voluntary sectors.</p> <p>CARE in Northern Ireland highlights in its submission that Northern Ireland does not currently have specific legislation covering a number of the provisions relating to the treatment of child victims of trafficking, who should receive special measures to protect, support and assist them for their long-term welfare (Articles 13-16 of the Directive). It is especially concerned that the need for a Guardian or Representative for Trafficked Children (Article 14(2) &amp; 16(3)) should be addressed and refers to the position in England and Wales where the government has argued that there is no need for a new role, but the evidence of a large number of trafficked children lost in England and Wales between 2007 and 2010 (301 out of 942) raises significant questions about the effectiveness of current arrangements.</p> <p>It refers in its submission to the GRETA report which raised concerns about the number of children that go missing, stating that 'a system of guardianship is essential to ensure the children's protection and rehabilitation, assist in severing links with</p>	<p>Recovered child victims of trafficking and those suspected of being victims of trafficking are deemed to be "children in need" under the Children (NI) Order 1995 and therefore the responsibility for provision of protection, care and support to these children, including access to health and social care, falls to HSC Trusts. We have passed a copy of the paper from CARE to DHSSPS.</p> <p>See above</p>
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		<p>traffickers and minimise the risk of children going missing' and urged action to 'ensure that all unaccompanied minors who are potential victims of trafficking are assigned a legal guardian'.</p> <p>It also refers to the UN which is encouraging governments 'to assign guardians or representatives a specific duty to advocate for the best interest of the child on a regular basis, to act as an advocate for the child as well as a bridge and focal point for the child's interaction with other authorities and actors. The guardian or representative should also be provided with a role in ensuring that the child is able to participate in decisions.'</p> <p>CARE in Northern Ireland believes that Northern Ireland has an opportunity to implement a more robust scheme and lead the way in the UK and that a system of advocates/guardians would ensure, at very little cost, that the expertise necessary is available to support these vulnerable children through the care system in Northern Ireland.</p> <p>CARE in Northern Ireland indicates that</p>	<p>See above</p>
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		<p>Lord Morrow's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill covers this issue.</p>	
<p><b>NATIONAL RAPPORTEUR</b></p>	<p><b>CARE in Northern Ireland</b></p>	<p>CARE in Northern Ireland believes that there is scope to take a more fulsome approach to implementing the Directive than has been adopted in England and Wales to meet the requirements of Article 19 by introducing a national rapporteur or equivalent mechanism.</p> <p>It highlights that the UN has encouraged clear accountability processes for their National Rapporteurs or equivalent mechanisms and that the UK has an interdepartmental ministerial group in place which together with the UK Human Trafficking Centre, fulfils the UK obligations. CARE in Northern Ireland points out that this monitoring system is not independent of government and the Ministerial group does not produce public reports. It also points out that while neither of these requirements is explicit in the Directive, the common understanding of a National Rapporteur is that they are</p>	<p>Article 19 requires that 'Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms.' The Directive does not require that the rapporteur or equivalent mechanism is <u>independent</u>. The Inter-Departmental Ministerial Group (IDMG) fulfils this function for the United Kingdom and published its first annual report on human trafficking on 18 October 2012. A copy has been sent to the Committee.</p> <p>There is already independent scrutiny of the response to human trafficking by a number of bodies including the Justice Committee and the All Party Group on Human Trafficking. In addition there are a number of independent reports written on anti-trafficking efforts. These include the Anti Trafficking Monitoring Group (ATMG) which published its report entitled 'All Change – Preventing</p>

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		<p>independent of government and reports are placed in the public domain. It highlights that Holland and other EU countries, which have created an independent overseer, have seen real success in the quality of information available to the government and the profile of trafficking in their parliaments.</p> <p>CARE in Northern Ireland states in its submission that, in implementing the Directive, Northern Ireland has the opportunity to follow best practice in Europe and to lead the way in the UK with a functional, independent rapporteur who will be able to undertake the kind of research, reporting and accountability role envisioned in Article 19. It also believes that a National Rapporteur could also ensure good liaison with NGOs and the Children's Commissioner for Northern Ireland thereby meeting two of the GRETA report recommendations for improved formalised arrangements with NGOs and civil society in Northern Ireland.</p>	<p>trafficking in the UK' in May 2012. In relation to Northern Ireland, the report noted that 'considerable efforts have been made by the Department of Justice to respond to trafficking in its jurisdiction'. The Justice Minister met Amnesty International and the Law Centre for Northern Ireland to discuss the specific recommendations in the report relating to Northern Ireland.</p> <p>A delegation from the Group of Experts on Action against Trafficking in Human Beings (GRETA) visited the United Kingdom in October 2011 to consider progress made by the United Kingdom in implementing and complying with the Council of Europe Convention on Trafficking in Human Beings. There was a visit to Northern Ireland. The report, which contains 35 proposals on the UK's approach to tackling human trafficking across all aspects of trafficking, was published on 12 September 2012. A number of the recommendations are not matters for which the DOJ is responsible. It makes <u>one recommendation which is specific to</u></p>
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			<p>Northern Ireland. This calls on the Public Prosecution Service (PPS) to promptly issue guidance on trafficking offences in Northern Ireland. The PPS launched a consultation on this policy on 11 June 2012 and hopes to publish the finalised policy before the end of this year. The Department is analysing the GRETA report, assessing the implications for Northern Ireland. This outcome will be shared with the Justice Committee.</p> <p>The US Trafficking In Persons (TIP) Report monitors countries' anti-trafficking efforts against minimum standards set out in the US Trafficking Victims Protection Act 2000, and ranks countries according to the standards each year. The UK has achieved a tier 1 ranking since the inception of the TIP report in 2004 – this is the highest ranking awarded.</p> <p>The 2012 TIP report suggests that the UK should consider a range of areas including: introducing private interviews for incoming domestic</p>
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			workers; introducing a system of guardianship for children; appointing a rapporteur or similar mechanism in each region; increased training and awareness raising; and assessing the significant level of non-EU potential trafficking victims who do not receive a positive conclusive grounds decision.
<b>PUBLIC PROTECTION ARRANGEMENTS</b>	<b>Northern Ireland Association for the Care and Resettlement of Offenders</b>	The Northern Ireland Association for the Care and Resettlement of Offenders seeks clarification in its submission on whether consideration has been given to the impact of the new offences on the Public Protection Arrangements.	Yes. Clause 5 (3)(a) and (b) of the Criminal Justice Bill adds the new offence of trafficking outside the United Kingdom for sexual exploitation to Schedules 1 and 2 of the Criminal Justice (NI) Order 2008.
<b>DUTY ON PUBLIC BODIES</b>	<b>Northern Ireland Policing Board</b>	The Northern Ireland Policing Board's (NIPB) submission refers to human trafficking as a very serious crime which blights our community. The NIPB is of the view that tackling this crime requires a multi-agency approach, which would arguably be enhanced if a statutory duty was placed upon public bodies, including the police, to have due regard to the likely effect	The Justice Bill 2010 included a provision (known as Clause 34) to ensure that public bodies exercised their functions with <i>'due regard to the likely effect of the exercise of those functions on crime and other antisocial behaviour in that community, and the need to do all that [they] reasonably can to enhance community safety'</i> . District Policing

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		<p>on crime and anti-social behaviour when exercising their functions and to do all that they reasonably can to enhance community safety.</p> <p>The NIPB highlights that such a duty was originally included at clause 34 of the Justice Bill but was subsequently removed from the final version of the Bill because of concerns around the workings of the principle, specifically the wide scope of the clause and the corresponding potential for costly legal challenges.</p> <p>The NIPB has called for an amendment to the Criminal Justice Bill to include a 'clause 34' type duty on public bodies to come into force on a day the Department of Justice, by Order, appoints, with the order containing such transitional, transitory or savings provisions as the Department thinks appropriate. The NIPB highlights that this would give the Department and the Committee for Justice time to consider the specific workings of the duty but would reduce delay in implementing the provision once the finer details were agreed.</p>	<p>Partnerships and Community Safety Partnerships, as well as other key bodies such as the Policing Board and the PSNI, expressed strong support for the provision when introduced.</p> <p>However, the Justice Committee felt that the mechanism for enforcement was not appropriate and was concerned about the potential for litigation. A number of amendments were proposed during Consideration Stage; however the Clause was not supported and was ultimately removed.</p> <p>The Committee did, however, strengthen another power contained within the Bill – that of designation. They put forward an enhanced form of this, which involved bringing on to all PCSPs across Northern Ireland those bodies with a key contribution to make in terms of enhancing community safety. These bodies would then be required to make a positive contribution to the work of the PCSPs.</p> <p>The Justice Act (Northern Ireland) 2012</p>
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		<p>The NIPB is of the view that, given the concerns regarding the potential for costly legal challenge and the enforceability of such a duty, consideration could be given to introducing a complaints type mechanism for aggrieved individuals which would, at least in the first instance, avoid the need for that individual to seek a judicial remedy.</p>	<p>includes the provision to designate key bodies onto PCSPs, ensuring that organisations with a strong contribution to make to enhancing community safety, such as the PSNI and the Housing Executive, get involved in the work of PCSPs. These bodies are already involved in the work of PCSPs, and an Order putting this on a statutory footing will be brought forward in late 2012/early 2013. It would be useful to consider the effectiveness of this power before considering the introduction of any provision similar to 'Clause 34'.</p>
<p><b>HYBRID OFFENCES</b></p>	<p><b>Public Prosecution Service</b></p>	<p>The Public Prosecution Service states in its submission that Clause 5 creates a new offence of trafficking outside the UK for sexual exploitation, and as this new offence is a hybrid offence (triable either summarily or on indictment), it considers that, to ensure consistency with the existing trafficking for sexual exploitation offences, it needs to be added to the list of hybrid offences which the Director of Public Prosecutions may refer to the Court of Appeal if he considers that a sentence is unduly lenient.</p>	<p>The Justice Minister intends, with the agreement of the Committee, to bring forward secondary legislation to add trafficking for non sexual purposes to the schedule of offences referable to the Court of Appeal on the grounds of unduly lenient sentences and to make the new offence for trafficking for sexual exploitation fully referable. (Trafficking for the current sexual exploitation offences is already covered.)</p>

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<p><b>DATA COLLECTION</b></p>	<p><b>Disability Action</b></p>	<p>Disability Action highlights in its submission that there is considerable evidence of a growing trend for the trafficking of people with disabilities for exploitation in Asia and the Middle East with reported incidents in Great Britain but despite recent reports on trafficking in Northern Ireland there is little available evidence on the extent of the problem of the trafficking of disabled people as disaggregated data is not available. Disability Action states that this is a common problem in many states which has lead to some commentators calling disabled people, “the forgotten people of modern day slavery”.</p> <p>Disability Action refers in its submission to research carried out by the Institute for Conflict Research in 2009 which highlights that the system of data collection on trafficking in Northern Ireland is virtually nonexistent. The research report recommended that the Northern Ireland Office should begin a wide-scale consultation with all relevant departments and organisations, including non-governmental</p>	<p>One of the next steps identified in the IDMG 2012 report as requiring further work is on data capture and intelligence sharing – capturing data on potential victims of human trafficking and improving our understanding of traffickers, the routes and methods they use, and the Organised Crime Gangs involved. The Department and the Organised Crime Task Force’s Immigration and Human Trafficking Subgroup will work with the Home Office and the UK Human Trafficking Centre on improving data collection.</p>
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		<p>organisations, on how data should be collected, stored and made available for assessment. Disability Action indicates that it is not aware of any action on this matter with regard to people with disabilities and highlights that it is unknown how many of the 75 individuals who are reported to have been rescued from trafficking by the PSNI since 2009/10 were disabled or what support has been given to them with regards to any disability.</p> <p>Disability Action also refers to the Assembly research paper on trafficking which highlighted data sharing and the availability of data as issues.</p> <p>Disability Action urges the Committee for Justice to call for better statistics and information on the extent of the problem of the trafficking of disabled people in Northern Ireland.</p>	
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## Appendix C

### **COMPLIANCE WITH THE EU DIRECTIVE ON PREVENTING AND COMBATING TRAFFICKING IN HUMAN BEINGS AND PROTECTING ITS VICTIMS (THE EU DIRECTIVE)**

#### **Summary**

<b>Business Area:</b>	Protection and Organised Crime Division, Safer Communities.
<b>Issue:</b>	The Department's assessment of compliance with the EU Directive on Human Trafficking, which is relevant to clauses 5 and 6 in the Criminal Justice Bill.
<b>Restrictions:</b>	None.
<b>Action Required:</b>	For information for the evidence session on 8 November.
<b>Officials Attending:</b>	Simon Rogers Deputy Director Protection and Organised Crime Division Debbie Pritchard Protection and Organised Crime Division Amanda Patterson Criminal Policy and Legislation Division

The EU Directive comes in to operation in April 2013. In conjunction with the Organised Crime Taskforce's Immigration and Human Trafficking Subgroup and other stakeholders, the Department has been analysing compliance from a Northern Ireland perspective. We will continue to assess what further work, in addition to the amendments to the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 to introduce new human trafficking offences, may be required not only for compliance but also to ensure that Northern Ireland has an effective and responsive system in place to address human trafficking and, in particular, to support victims..

2. The Directive comprises 22 Articles. It requires Member States to:
- Criminalise intentional acts of trafficking with specific available sanctions,
  - Make particular provisions about the investigation and prosecution of trafficking offences, including providing that national authorities are entitled not to prosecute or impose penalties on victims of trafficking for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being trafficked,
  - Take jurisdiction over trafficking offences where they are committed wholly or partly within a Member State's territory or where the offender is the national of a Member State,
  - Provide assistance and support to victims of trafficking,
  - Provide procedural safeguards for victims of trafficking in criminal investigations and proceedings,
  - Provide particular support and safeguards to child victims, and unaccompanied child victims of trafficking, and
  - Establish a national rapporteur or equivalent mechanism.
3. The table attached sets out the requirements of each Article and our assessment based on the information we have gathered, of whether Northern Ireland is compliant. Articles 13, 14, 15 and 16.1 to 16.3 relate to issues which are the responsibility of the Department of Health, Social Services and Public Safety (DHSSPS) and DHSSPS has provided advice on compliance. DHSSPS also has some responsibilities under Article 11 in relation to assistance and support for victims after the recovery and reflection period.
4. On the basis of the information to date, we believe that we are, or will be by April 2013, compliant with the Directive. Compliance is, of course, a question of degree in some areas. For instance, there is training in place for key agencies and staff on human trafficking but we know more

could be done and are planning to do so. There are areas in which we are considering secondary legislation to ensure compliance, such as support for victims, and as this is a cross-cutting issue we are consulting the other relevant Departments. In addition, there are some areas where a minimalist approach is insufficient for the standards we want to meet in Northern Ireland and where we have gone beyond the requirements of the Directive. There are also areas where we believe that making statutory provision could hamper the fight against human trafficking eg by including definitions of human trafficking in Northern Ireland which could create loopholes and restrict flexibility in individual cases. Finally, suggestions have been made for inclusion of certain aspects in legislation, such as the offence of forced begging, which are already covered by existing provisions and are not required.

### **Definitions**

5. Some of those who responded to the Department's consultation on the introduction of the new offences and to the Committee's call for evidence, suggested that various definitions should be incorporated in legislation. We are concerned that there is a risk in being overly prescriptive and enshrining certain aspects in legislation such as definitions of human trafficking or victim as this can –

- Limit flexibility in relation to dealing with individual cases;
- Make it more difficult to respond quickly to changes in criminal behaviour; and
- Create loopholes and provide criminals with a means to work around the legislation.

6. The Department sought views on including definitions in Northern Ireland legislation from the Public Prosecution Service (PPS). PPS has considered this from a prosecutorial perspective. PPS has advised that the circumstances of a human trafficking case can vary greatly. The acts

referred to in Articles 2.1 and 2.3 of the EU Directive would already be covered by the existing offences for England and Wales and Northern Ireland. There may be cases where the circumstances of the trafficking are more subtle and there may be no evidence of the means referred to in Article 2.1. PPS has noted that if Article 2.1 is included as a definition of trafficking or included in the definition of the offences then we may limit the offence and will therefore be unable to prosecute the offence of trafficking in cases where there is no evidence of the means contained in the definition.

7. We would therefore caution strongly against such provision in the legislation.

### **Work on compliance – administrative measures**

#### Article 12 - special measures for victims

8. The Criminal Evidence (NI) Order 1999 provides for special measures for ‘vulnerable; or ‘intimidated’, witnesses to assist them to give their best evidence. Article 5(4) of the 1999 Order provides that complainants of sexual offences (including in circumstances of human trafficking) who are giving evidence are automatically considered to be intimidated witnesses. Victims of labour and other exploitation offences set out in section 4 of the Asylum and Immigration (Treatment of Claimants etc Act 2004 (“section” 4 victims) can be considered for special measures assistance by the court under the current legislation. We are compliant with this Article, but current measures will be further enhanced when DOJ amends the “Achieving Best Evidence in Criminal Proceedings” Guidance to specify human trafficking victims as falling within the definition of “intimidated”. The Department also plans to include a specific section on human trafficking victims in guidance on working with intimidated witnesses. This will be brought forward in 2013.

Article 17 – compensation

9. We are compliant with this Article. A guidance note on compensation for victims of human trafficking will be issued by the Chief Executive of the Compensation Agency to agency staff. Guidance on claiming compensation will be included in the victims' leaflet being developed by the Department and Amnesty International.

Article 18 – Training

10. We are compliant but further work on training is planned and the Immigration and Human Trafficking Subgroup will draw up a training needs analysis.

**Secondary legislation**

11. There is provision for departments to make regulations in connection with a Directive under section 2(2) of the European Communities Act 1972. As a precautionary measure, the Minister has agreed to Northern Ireland's inclusion in such a Designation Order. This is an administrative procedure which will allow any Northern Ireland Department to put in place secondary legislation required to implement any of the provisions in the EU Directive.

Unduly lenient sentences.

12. Secondary legislation is required to add trafficking for non sexual purposes to the schedule of offences referable to the Court of Appeal on the grounds of unduly lenient sentences and to make the new offence for trafficking for sexual exploitation fully referable. (Trafficking for the current sexual exploitation offences is already covered.)

### The e-Commerce Directive

13. EU Directive 2000/31/EC relates to certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the e-Commerce Directive). This Directive contains provisions restricting the power of Member States to impose obligations, broadly speaking, on internet activity. As trafficking offences can be committed over the internet the Directive needs to be implemented in respect of such offences. The e-commerce Directive Regulations 2002, which were made by the Department of Trade and Industry, implemented the Directive in relation to the Sexual Offences Act 2003 which included some trafficking offences, and implemented them for England, Wales and Northern Ireland. However the Directive has not been implemented in respect of the other trafficking (non-sexual exploitation) offences in section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and this is required as is cover for the new offences in the Criminal Justice Bill. We are liaising with the Home Office and legal adviser about this and secondary legislation under the Designation Order is likely to be required.

### Article 11 – assistance and support for victims

14. We are considering whether secondary legislation is required in relation to Article 11. This Article requires Member States to provide assistance and support for victims of trafficking. In Northern Ireland, such assistance and support during the recovery and reflection period is currently provided under a contract between the Department of Justice and Migrant Help. We are considering introducing legislation to place a duty on the relevant Departments to ensure that arrangements for providing assistance and support for victims of trafficking are in place.

### The National Referral Mechanism

15. The “National Referral Mechanism” (NRM) has been set up on an administrative basis to identify victims of trafficking. The NRM was introduced in 2009 to meet the UK’s obligations under the Council of European Convention on Action against Trafficking in Human Beings. We understand that the Home office is considering whether any reference to the NRM needs to be made in legislation and we will continue to liaise with them on this.

### **Going beyond the minimum requirements of the Directive**

16. Northern Ireland is not simply replicating the provisions in the Protections of Freedoms Act 2012 (POFA 2012) as some have suggested. We are legislating not only for the mandatory elements required by Article 10(1) of the Directive in relation to the new criminal offences but also the discretionary elements in Article 10(2) which cover habitual residents and bodies incorporated under the law of a part of the United Kingdom. This will include legal persons.

17. Article 4.2 of the EU Directive requires that Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

- (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include, at least, child victims;
- (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ( 1 );
- (c) deliberately or by gross negligence endangered the life of the victim; or
- (d) was committed by use of serious violence or has caused particularly serious harm to the victim.

18. The maximum term of imprisonment in Northern Ireland under provisions in the Sexual Offences Act 2003 and the Asylum and Immigration Act 2004 for the current indictable offences and the new offences in the Criminal Justice Bill is 14 years. In addition, trafficking for sexual exploitation is also a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order and so, where the court considers that the offender poses a risk of serious harm, can attract either an indeterminate (life) or extended custodial sentence, with future release determined by the Parole Commissioners.

19. Article 13 of the Directive provides that there should be a recovery and reflection period of at least 30 days for potential victims of human trafficking. The minimum recovery and reflection period in the United Kingdom is 45 days which can be, and in many cases is, extended by the Competent Authority.

### **The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016**

20. In June 2012 the European Commission published an EU Strategy on Trafficking in Human Beings. This aims to focus on measures that will support the transposition and implementation of the EU Directive. The Strategy identifies five priorities and outlines a number of actions which the European Commission proposes to implement over the next five years in conjunction with others, including Member States. The priorities are -

- A. Identifying, protecting and assisting victims of trafficking
- B. Stepping up the prevention of trafficking in human beings
- C. Increased prosecution of traffickers
- D. Enhanced coordination and cooperation among key actors and policy coherence



E. Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings

21. The EU Strategy promotes greater cooperation between Member States on human trafficking and encourages increased engagement with key actors in the field. We will look closely at the priorities and actions when taking forward further work on a strategy for Northern Ireland on human trafficking.

**Compliance with the Directive by the Republic of Ireland**

22. When we briefed the Committee on 20 September, we undertook to provide advice on compliance with the Directive by the Republic of Ireland (ROI). A paper provided by the Department of Justice and Equality is attached.

Department of Justice and Equality

**Briefing Note on Human Trafficking in Ireland**

**1 October 2012**

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## **Introduction**

Ireland is mainly a destination country and to a lesser extent a transit country. Women, men and children are suspected of being trafficked for the purposes of sexual exploitation and forced labour. Women from Eastern Europe, Nigeria, other parts of Africa, South America and Asia are trafficked to Ireland for forced prostitution. Labour trafficking victims, both male and female, are mainly from Africa and Asia. Since the enactment of the Criminal Law (Human Trafficking) Act, 2008 Ireland's response to trafficking in human beings has developed rapidly as outlined beneath.

## **Legislative measures**

### Criminal Law (Human Trafficking) Act 2008

The *Criminal Law (Human Trafficking) Act 2008* was enacted on 7 June 2008. This legislation creates an offence of recruiting, transporting, transferring to another person, harbouring or causing the entry into, travel within or departure from the State of a person or providing the person with accommodation or employment for the specific purpose of the trafficked person's sexual or labour exploitation or removal of his or her organs. It provides for penalties up to life imprisonment and, at the discretion of the court, a fine for persons who traffick or attempt to traffick other persons for the purposes of labour or sexual exploitation or for the removal of a person's organs.

It also makes it an offence to sell or offer for sale or to purchase or offer to purchase any person for any purpose. Penalties of up to life imprisonment and, at the discretion of the court, a fine, also apply in respect of these offences.

It is also an offence for a person to solicit for prostitution a person who s/he knows or has reasonable grounds for believing is a trafficked person.

The penalty can be up to five years imprisonment and/or an unlimited fine on conviction on indictment.

The 2008 Act builds on the *Child Trafficking and Pornography Act 1998*.

#### Sexual Offences (Jurisdiction) Act 1996

This Act allows for the prosecution of an Irish citizen, or a person ordinarily resident in the State, who commits an act in another country which is a sexual offence against a child in that other country and if done within the State, would constitute a sexual offence against a child in the State. The penalties are a maximum of 5 years imprisonment on conviction on indictment.

#### Immigration, Residence and Protection Bill

In circumstances in which persons have no legal basis to remain in the State, protection may be granted under the Administrative Immigration Arrangements for the Protection of Victims of Trafficking through the granting of a 60 day recovery and reflection period and/or 6 month renewable temporary residence permission, where the trafficked person wishes to assist An Garda Síochána or other relevant authorities in any investigation or prosecution in relation to the alleged trafficking. The Administrative Immigration Arrangements were established in June 2008 to coincide with the enactment of the Criminal Law (Human Trafficking) Act 2008. Since their establishment a total of 21 persons have been protected under the Administrative Arrangements. 16 persons have received the 60 day recovery and reflection period while 21 persons have been granted the renewable 6 months temporary residence permission. To date, any person requiring a renewal of their temporary residence permission has been granted a renewal. The Administrative Immigration

Arrangements will be put on a legislative footing when the Immigration, Residence and Protection Bill is enacted into legislation.

## **Other measures to combat trafficking in human beings**

### **Anti Human Trafficking Unit**

The Anti-Human Trafficking Unit (AHTU) was established in the Department of Justice and Equality in February 2008. The Unit is working diligently to ensure that the Irish response to trafficking in human beings is coordinated, comprehensive and holistic. A key element of this strategy is the *National Action Plan to Prevent and Combat Trafficking in Human Beings in Ireland 2009 - 2012* which was published by the Minister for Justice and Equality in June 2009 and is available at [www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie). The Plan was developed under four main headings:

- (i) Prevention and Awareness Raising
- (ii) Prosecution of traffickers
- (iii) Protection of victims and
- (iv) Child trafficking.

It sets out the structures which enabled Ireland to comply with the relevant international instruments. Ireland ratified the *Council of Europe Convention on Action against Trafficking in Human Beings* and it came into effect for Ireland on 1 November 2010. Ireland also ratified the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* which came into effect for Ireland on 17 July 2010. The Anti-Human Trafficking Unit, in conjunction with the various stakeholders, each year identifies and implements a number of priority issues from the National Action Plan. The National Action Plan contains 144 actions. At 30 June 2012, 78 actions have been completed – in addition to 11 that were complete at time of publication. 17 have been

significantly progressed and 38 are ongoing actions. A new Plan is in the process of being drafted.

### **Other dedicated Anti-Human Trafficking Units**

In addition to the AHTU there are 3 other dedicated Units in State Agencies dealing with this issue, the Human Trafficking Investigation and Co-ordination Unit in the Garda National Immigration Bureau (GNIB), the Anti-Human Trafficking Team in the Health Service Executive (HSE) and a specialised Human Trafficking legal team in the Legal Aid Board (LAB). These Units have been set up as a response to Ireland's international obligations to provide services to victims of the trafficking of human beings. Dedicated personnel are also assigned to deal with prosecution of cases in the Office of the Director of Public Prosecutions (DPP) and to assist victims moving to independent living arrangements in the New Communities and Asylum Seekers Unit in the Department of Social Protection.

### **Consultative Structures**

An Interdepartmental High Level Group was established by the Minister for Justice and Equality in late 2007 to recommend to him the most appropriate and effective responses to trafficking in human beings. The High Level Group comprises senior representatives from the key Government Departments and Agencies<sup>1</sup>. Members from the Group engage with NGOs and International Organisations in the manner of a Roundtable Forum.

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<sup>1</sup> The Departments at the time of establishment were: Dept. of Enterprise, Trade & Employment; Dept. of Health & Children; Health Service Executive; Office of the Minister for Children & Youth Affairs; Irish Naturalisation & Immigration Service; Victims of Crime Office; Garda National Immigration Bureau.

In addition, the Group approved the establishment of five interdisciplinary Working Groups chaired by the Anti Human Trafficking Unit and comprising representatives from the relevant Government Agencies, NGOs and International Organisations to progress matters at a practical 'on the ground' level and, in turn, report to the High Level Group. Each of the Working Groups meets every few months.

The Working Groups deal with:

1. Development of a National Referral Mechanism
2. Awareness Raising and Training
3. Child trafficking
4. Labour Exploitation Issues
5. Sexual Exploitation issues.

In total, over 70 different Governmental, Non-Governmental and International Organisations are involved with the AHTU in anti-trafficking initiatives. The method of consultation put in place is based on that recommended by the Organisation for Security and Cooperation in Europe in the context of developing National Referral Mechanisms on human trafficking.

### **Enforcement**

#### Garda Síochána Annual Policing Plan

In 2012, An Garda Síochána in their Annual Policing Plan identify trafficking in human beings as one of the priorities with increased priority given to prevention and detection of human trafficking. It was also identified as a policing priority in 2009, 2010 and 2011.

#### Human Trafficking Investigation and Co-ordination Unit

The Commissioner of An Garda Síochána established a *Human Trafficking Investigation and Co-ordination Unit* within the Garda

National Immigration Bureau (GNIB) in 2009. The remit of the Unit is to provide a lead role on policy issues in the field of human trafficking. The Unit acts as a centre of excellence for the organisation and oversees all investigations where there is an element of human trafficking and provides advice, guidance and operational support for investigations.

Since the enactment of the 2008 Act a concerted effort has been made by An Garda Síochána to vigorously prosecute offenders of this crime and efforts in this regard will continue into the future. The extent of human trafficking in Ireland is set out in Annual Reports for 2009, 2010 and 2011 on the blueblindfold website at [www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie). There are a number of cases currently before the Courts of which 7 were initiated this year up to 30 September 2012. Prosecutions under Section 3 of the Criminal Law (Human Trafficking) Act, 2008 are being taken in all 7 cases and prosecutions under Section 2 of the Criminal Law (Rape) Amendment Act 1990 are additionally being taken in 2 of the cases. All 7 prosecutions involve victims who are children.

For the year 2012 up to 30 September, a total of 18 allegations of human trafficking have been referred to An Garda Síochána involving 22 alleged victims. In a significant number of cases where investigations have been undertaken and completed, no evidence of human trafficking has been found. However prosecutions are taken where any other offences are disclosed.

Prosecutions in themselves are not a fair measure of the effectiveness of law enforcement. Account must also be taken of

- policing measures aimed at prevention and creating a hostile environment for traffickers and
- international co-operation and information sharing resulting in a conviction in another jurisdiction for offences which took place in this jurisdiction.



A dedicated email on the Blue Blindfold website [[www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie)] is provided to encourage people to report suspicious activity or suspicions in the area of human trafficking. Since 1<sup>st</sup> January 2012 over 306 emails have been received at this website which is monitored on a daily basis by members of the Human Trafficking Investigation and Co-ordination Unit of the Garda National Immigration Bureau. Appropriate action is taken with regard to each email received and several investigations have been launched as a result of this facility on the Blue Blindfold website.

#### Director of Public Prosecutions (DPP)

The DPP has nominated particular prosecutors to deal with cases of human trafficking and issued them with guidelines. Their purpose is to guide prosecutors in examining which factors are to be considered in assessing whether to commence or continue with a prosecution including a consideration as to whether the public interest is served by a prosecution of a victim of human trafficking who has been compelled to commit offences (e.g. immigration or sexual offences) as a result of being trafficked.

#### **Assistance to victims of human trafficking**

The National Referral Mechanism is the term used to describe:

- (i) The process by which an alleged victim of human trafficking is identified;
- (ii) The range of assistance and support services available to alleged victims of human trafficking;
- (iii) How alleged victims are referred or can apply to access each of those services.

#### Identification

In Ireland a person is considered to be an alleged victim of human trafficking once they or someone acting on their behalf make a claim of having being trafficked to An Garda Síochána. At that time, the person is offered and, if required, provided with access to all of the services available to alleged victims of human trafficking as set out beneath. In Ireland persons are not formally registered as victims of human trafficking as no such status exists. Rather such persons are seen as victims of an alleged crime of human trafficking. Consequently, the dichotomy between formal and informal identification as made in some Member States does not apply in the Irish context. In circumstances in which persons have no legal basis to remain in the State protection may be granted under the Administrative Immigration Arrangements for the Protection of Victims of Trafficking for the purposes of regularising their presence in the State. In such instances, a member of An Garda Síochána, not below the rank of Superintendent in the office of the Garda National Immigration Bureau (GNIB) must make an assessment as to whether there are reasonable grounds for believing that human trafficking has occurred.

#### Services available under the National Referral Mechanism

The range of assistance and support services which are required to be made available to victims of trafficking under the international obligations to which Ireland is party – depending on the status and needs on the individual - includes:

- i. Accommodation
- ii. Medical care / care planning
- iii. Psychological assistance
- iv. Material assistance e.g. Supplementary Welfare Allowance, Rent Supplement
- v. Legal aid and advice
- vi. Access to the labour market, vocational training and education (for those not in the asylum system)

- vii. Police services
- viii. Community-based services provided by NGOs
- ix. Compensation
- x. Permission to be in the State and/or non-removal pending a determination of an allegation of trafficking, and a Temporary Residence Permission if assisting with an investigation or prosecution
- xi. Asylum services
- xii. Translation and interpretation when appropriate
- xiii. Access to education for children.

How potential victims are referred to support services

If the person wishes to avail of State services the person will be referred, with their consent, by the Garda National Immigration Bureau to:

- (a) The Reception and Integration Agency (RIA) (if s/he is a foreign national who is not an asylum seeker) for accommodation pending a decision as to whether s/he is to be granted a 60 day Recovery and Reflection Period and during that period if/when it is granted. [If the person is an Irish National requiring accommodation or a child they will be referred to the HSE]. The Asylum Seekers/New Communities Unit (ASNCU) of the Department of Social Protection links in with potential and suspected victims of human trafficking (who are not in the asylum process) on exiting RIA accommodation. RIA notifies the Department of Social Protection 50 days into the Recovery and Reflection Period.
- (b) The HSE for individualised care planning. The HSE offers services to potential and/or suspected victims of trafficking in human beings who have been notified to them by An Garda Síochána if requested to do so by the person. The aim of the care plan is to enable the

person concerned to gain independence thus empowering him/her to make decisions in a safe and supportive environment whilst guiding him/her through all the stages of the trafficking process. Information will be shared on a need to know basis with other organisations in the field and only with the written consent of the client.

Since the service began in 2009 up to 30 September 2012 a total of 87 referrals have been made to the HSE by An Garda Síochána of which 11 were made so far in 2012. A total of 79 care plans have been completed of which 11 were completed to the end of September, 2012. Care Plans have covered such things as intervention in regard to allowances, school fees, travel vouchers, housing supplement, elements of health check for instance general health screening, GP referral, mental health service and counselling, initiating legal support actions around housing, etc.

- (c) A specialist unit of the Legal Aid Board for legal aid and advice (if s/he wishes to avail of this service). The Legal Aid Board provides legal advice to potential and suspected victims on the options open to them. This facilitates each person in making an informed decision on what is best for them. There is no charge to the victim for this service. There is no waiting list, unless a large number of people are discovered around the same time.

The Legal Aid Board has responsibility for providing free legal advice in relation to

- potential and suspected victims of trafficking immigration status in the State
- the measures set out in the Administrative Immigration Arrangements for the protection of Victims of Trafficking

which provide for recovery and reflection and temporary residence,

- potential or suspected victims seeking asylum,
- seeking redress through the employment protection legislation,
- information regarding what is involved in a criminal trial for a victim/witness,
- information regarding compensation – criminal and civil,
- voluntary return home.

Since the service was provided in November 2009 a total of 69 cases have been referred by the GNIB to the LAB up to September, 2012. Of those 52 have registered to available of the service; 5 have withdrawn from the service; 5 have opted for private solicitors; 2 have returned home; 2 are not in contact; 1 is considering whether to register or not and 2 are pending a first consultation. The 52 persons include 2 minors; 7 aged out minor and 43 adults. [It should be noted that persons who claim refugee status and trafficking as part of their claim are provided with legal advice in the context of their asylum claim.]

#### Employment/ Vocational Training

Victims cannot work during the initial 60 days Recovery and Reflection Period. However, once they are granted Temporary Residence Permission they are entitled to work and enter training programmes. This does not apply if they are in the asylum system. There is a statutory prohibition in Section 9(4) of the *Refugee Act 1996* preventing asylum seekers from working.

In order to support the victim through the process of their recovery and integration back into the community, the Health Service Executive care plan includes a category on education/training. This category is there to

help to ensure that suspected victims are 'job ready' and that any issues which might hinder successful completion of a course are resolved.

FÁS, the State Training and Employment Authority, conduct a training needs assessment with a victim who has been referred to them as job ready by the Health Service Executive (HSE) to see what type of training courses they might benefit from. Referrals to FÁS are made through the HSE Anti-Human Trafficking Team key worker.

### **Child Trafficking**

The Health Services Executive (HSE) has responsibility, under the Child Care Acts and the Children First Guidelines, to make all necessary provisions for any unaccompanied children identified as alleged victims of trafficking. Where an unaccompanied child is identified as an alleged victim of trafficking he/she will be immediately referred to the Social Work Team for Separated Children seeking Asylum. Services provided by the HSE to alleged child victims of trafficking include:

- Initial counseling and debriefing provided by an experienced HSE psychologist.
- An advocacy/support service to assist them in dealing with other services.
- A multi-disciplinary assessment of children's needs is conducted over time, this is adapted to the child's individual experience and capacity. A Care Plan is generated on the basis of this assessment and incorporates all the services required to meet the child's needs, including the most appropriate placement recommended.
- The allocation of a social worker to oversee and implement individual Care Plans.
- A range of placement options is made available and the protection level and care required is taken into account when deciding on placement options.

- Full medical screening with referral to more specialist medical services, if required.
- Assessment in relation to immigration status and linkage to the asylum process and advice regarding all options available.

The processes which have been put in place in Ireland to tackle the crime of human trafficking have received international commendation by the London School of Tropical Medicine at a seminar in Brussels in November, 2010; by Anti-Slavery International on 14 December 2010; by the United Nations Office on Drugs and Crime (UNODC) on 18 March 2011; and by the Director of the US Human Smuggling and Trafficking Centre on 11 October 2012. Ireland has been recognised as a leader in combating trafficking in persons and an innovator in victim care. It has been held that An Garda Síochána has an enlightened approach to dealing with victims of human trafficking and the HSE Care Plan and the direct referral by An Garda Síochána to the HSE is deemed a model of international best practice.

### **Awareness Raising**

A number of awareness raising and training initiatives have taken place since the establishment of the Anti-Human Trafficking Unit in 2008, some of which include:

- The Blue Blindfold campaign, the central message of which is “*Don’t Close your Eyes to Human Trafficking*”. The campaign was initially launched in 2008 and re-launched in the North and South of Ireland on 18 January, 2011 to reinforce its central message.
- Articles and/or advertisements have been placed in a variety of publications such as the *Judicial Studies Journal*, Irish Taxi Drivers Federation Yearbook, GAA sport programmes, *Informatia* – a Romanian newsletter, the *Public Sector Journal*, *Forum* – a magazine for GPs, etc.

- Representatives from AHTU and GNIB have made a number of presentations on human trafficking to a variety of people including University Students, Secondary school students, health professionals, education professionals and hotel staff.
- AHTU printed bookmarks, leaflets and information cards for widespread distribution.
- AHTU organised a film festival on Human Trafficking to coincide with EU Anti-Trafficking Day on 18 October 2010. Two films were shown, one in the afternoon which had a theme of labour exploitation and one in the evening which had a theme of sexual exploitation. In excess of 650 persons received tickets to attend either the afternoon or evening event. In excess of 250 Secondary School students (Transition Year and higher) attended the afternoon event.
- A pack for the Civic, Social and Political Education (CSPE) curriculum in Secondary schools was developed and sent out to all schools the first week of September 2011. Each pack contained leaflets, a poster, a booklet entitled 'Don't Close your Eyes to Slavery' and information cards which will facilitate a group learning activity for students in the junior cycle.
- In conjunction with the Department of Justice in Northern Ireland the AHTU is running a social media competition directed at third level students. Students are invited to submit either a photograph or a short video depicting human trafficking with prizes being awarded to the top three entries in each of the two categories by an independent judging panel.

Full details of the awareness raising work undertaken to date can be seen on [www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie).

## **Training**

### **Train the Trainer Courses**



The International Organisation for Migration (IOM) secured a contract in 2009 to develop, design and deliver a *'Train the Trainers'* programme which was subsequently rolled out to personnel in Government agencies likely to encounter victims of trafficking. The idea of the programme is that participants on the course will train others in their organisations on the issues associated with human trafficking. Three *'Train the Trainer'* courses have been completed with 40 participants from 13 different organisations. The roll-out of this training is being monitored by the International Organisation for Migration (IOM).

#### Awareness raising training

139 people have participated in basic awareness training which has been provided by the IOM with input from NGOs, the Garda National Immigration Bureau and the Anti-Human Trafficking Unit. Course participants included representatives of the:

- National Employment Rights Authority
- Private Security Authority
- Department of Enterprise, Jobs & Innovation
- Irish Naturalisation & Immigration Service
- Health Service Executive
- Department of Social Protection
- Office of the Refugee Applications Commissioner
- Anti Human Trafficking Unit
- Victims' Support Helpline
- Victims of Crime Office.

#### Garda Síochána Training

An Garda Síochána has placed particular importance on ensuring that its members receive training which will equip them to tackle the phenomenon of human trafficking. A continuous professional development training course entitled *'Tackling Trafficking in Human Beings: Prevention,*

*Protection and Prosecution*’ has been designed by An Garda Síochána. The IOM, the United Nations, AHTU and the Health Services Executive (HSE) together with NGOs such as Ruhama, Migrants Rights Centre Ireland (MRCI) and the Immigrant Council of Ireland (ICI) are assisting in delivering training in recognition and investigation of trafficking in persons to front line Garda and PSNI Officers in joint training courses in the Garda Training College, Templemore, County Tipperary. Training includes victim identification through recognising indicators of trafficking in human beings.

The aim of the course is to alert operational personnel within An Garda Síochána to the existence of the phenomenon of trafficking and to empower them to identify victims so as to provide for their wellbeing and to ensure initiation of criminal investigations, where appropriate.

Members of the Police Service of Northern Ireland, UK Borders Agency and London Metropolitan Police have attended this training and the former Head of the United Kingdom Human Trafficking Centre, who is now working with the United Nations on measures to address human trafficking, has presented at each of these training courses emphasising the international and cross-border co-operation between police forces.

Up to September 2012 some 692 operational Garda personnel have received this detailed training to enable them identify and refer victims of human trafficking for support and deal with prosecutions, if appropriate. Awareness raising training on human trafficking has now been delivered to a total of

- 3,196 probationer Gardaí during their final phase of training;
- 42 members of the Garda Reserve;
- 96 Immigration Officers;
- 192 Ethnic Liaison Officers (of whom 4 were PSNI Liaison Officers);
- 80 Senior Investigating Officers;

- 10 staff in the Border Management Unit in Dublin Airport.

A web based portal is now available on the Garda computer system. Every Garda Officer can access a step-by-step guide on what to do if s/he suspects a person to be a victim of human trafficking.

The National Bureau of Criminal Investigation (NBCI) held a one day Organised Prostitution course in January 2011 which was attended by approximately 100 members of An Garda Síochána.

#### Legal Aid Board

A specialised training course was held in September 2009 for staff of the Legal Aid Board who provide legal advice to potential and suspected victims of trafficking in human beings.

#### **Funding provided to NGOs**

The Department of Justice and Equality has approved funding to two NGOs for 2012 - €195,000 to Ruhama who assists victims of sexual exploitation, and

-€5,000 to the Migrant Rights Council Ireland (MRCI) who assists victims of labour exploitation.

#### **Directive 2011/36/EU**

Ireland has opted into the Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims and replacing Framework Decision 2002/629/JHA.

Legislative changes will need to be made to the Criminal Law (Human Trafficking) Act, 2008 to ensure that the Irish definition of human trafficking complies with that contained in the Directive i.e. to cover begging and other criminal activities. The majority of the other measures required to give effect to the Directive are already in place in Ireland. The

manner of implementation of the provision concerning the appointment of a National Rapporteur or equivalent mechanism is still under consideration.

Mandatory minimum custodial sentences – In Ireland the legislature enacts criminal laws which usually provide for maximum penalties in the form of a fine or imprisonment, or both. In general there are no statutory sentencing guidelines. Within the Irish legislative framework, the determination of penalty in any individual case is largely a matter for the trial judge, taking case law, including appealed cases, into account. This allows the courts to take all the circumstances of the offence and all the relevant aggravating and mitigating factors into account. The gravity of the offence, the facts surrounding the commission of the offence, the criminal record of the accused and the impact on the victim are among the critical factors taken into account before a sentence is imposed. The judge must take into account the circumstances of the offence and the offender. Also the Director of Public Prosecutions can appeal against the sentence imposed if she believes it to be unduly lenient.

The provisions of Article 10 on Jurisdiction have been given effect to by Section 7 of the Criminal Law (Human Trafficking) Act 2008 which sets out the various scenarios where a person could be liable for an offence e.g.

- where a person who is an Irish citizen or ordinarily resident in the State does an act in a place other than the State which, if done in the State, would constitute a trafficking offence.
- where a person does an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute a trafficking offence.
- where a person conspires with, or incites, in the State, another person to do an act in a place other than the State that, if done in the State, would constitute a trafficking offence.

- where a person who is an Irish citizen or ordinarily resident in the State conspires with, or incites, in a place other than the State, another person to do an act in a place other than the State that, if done in the State, would constitute a trafficking offence.
- where a person conspires with, or incites, in the State or in a place other than the State, another person to do an act in relation to an Irish citizen in a place other than the State that, if done in the State, would constitute a trafficking offence.
- where a person conspires with, or incites, in a place other than the State, a person who is an Irish citizen or ordinarily resident in the State to do an act in a place other than the State that, if done in the State, would constitute a trafficking offence.

## **Prosecution**

The Criminal Law (Human Trafficking) Act 2008 came into effect on 7<sup>th</sup> June 2008 and an Anti-Human Trafficking Unit was also established in the Department of Justice and Equality in that year. On 1 January 2009, the Anti-Human Trafficking Unit initiated a data collection strategy for the purpose of gaining a more in-depth understanding of the nature and extent of human trafficking in Ireland. To date, annual reports for 2009, 2010 and 2011 have been published and are available from Ireland's dedicated anti-human trafficking website, [www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie).

These Annual Reports outline the number of convictions in each year in respect of offences under the Criminal Law (Human Trafficking) Act 2008 and in respect of convictions for other offences related to human trafficking. It is important to note that convictions occurring in any calendar year may be the result of prosecutions initiated in previous calendar years. For the purpose of clarity the convictions recorded, as outlined in these Annual Reports, for the period 2009 to 2012 are set out in the Table below.

<b>Year</b>	<b>Act</b>	<b>Accused</b>	<b>Charges</b>	<b>Sentence</b>
2009/ 10	Child Trafficking and Pornography Act, 1998	Adult male	Incitement to traffick a minor for sexual exploitation and incitement to the possession of child pornography.	6 years imprisonment and Post Release Supervision Order for 20 years.
2010	Criminal Law (Human Trafficking) Act, 2008	Adult male	Recruitment and trafficking of a minor.	3 years imprisonment (suspended). Placed on the Sex Offenders Register for 5 years and entered into a bond to be of good behaviour for a

				period of 3 years.
2010	Child Trafficking and Pornography Act, 1998	Adult male	Sexual exploitation of a child.	Eight month imprisonment (suspended).
2010	Child Trafficking and Pornography Act, 1998 Criminal Law (Rape)(Amendment) Act, 1990	Adult male	Recruitment and trafficking of a minor for sexual exploitation and production of child pornography.	10 years imprisonment. Placed on Sex Offenders Register for life. Post Release Supervision Order for 15 years.
2011	Criminal Law (Human Trafficking) Act, 2008	Adult male	Recruitment and trafficking of a minor for sexual exploitation.	3 years imprisonment
2011	Child Trafficking and Pornography Act, 1998 <small>[see end note]</small>	Adult female	Controlling and sexually exploiting a minor for the purposes of prostitution.	4 years imprisonment (final two years suspended).
2011	Child Trafficking & Pornography Act, 1998	Adult male	Controlling and sexually exploiting of a minor for the purposes of creating child pornography.	Fine of €100.
2011	Criminal Law (Sexual Offences) Act, 1993	Adult male	Controlling/organising prostitution (female adult victim)	2½ years imprisonment (final fifteen months suspended).
2012	Criminal Law (Human Trafficking) Act, 2008	Adult female	Controlling and sexually exploiting a minor for the purpose of creating child pornography.	3 years imprisonment
2012	Illegal Immigrants (Trafficking) Act, 2000 Criminal Law (Sexual Offences)	Adult Female	Trafficking of a female minor illegal immigrant and controlling/direc	3 years imprisonment

	Act, 1993		ting prostitution	
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Note: As amended by Section 6 of the Criminal Law (Sexual Offences) Amendment Act 2007 as substituted by Section 3(2) of the Criminal Law (Human Trafficking) Act 2008.

In addition, in 2009, as a result of interstate cooperation between the Romanian and Irish authorities, 3 persons were prosecuted in Romania for trafficking related offences committed in Ireland. This resulted in convictions and sentencing of the three individuals to periods of imprisonment of seven years, five years and five years.

There are a number of cases currently before the Courts of which 7 were initiated this year up to 30 September 2012. Prosecutions under Section 3 of the Criminal Law (Human Trafficking) Act, 2008 are being taken in all 7 cases and prosecutions under Section 2 of the Criminal Law (Rape) Amendment Act 1990 are additionally being taken in 2 of the cases. All 7 prosecutions involve victims who are children.

For the year 2012 up to 30 September, a total of 18 allegations of human trafficking have been referred to An Garda Síochána involving 22 alleged victims. In a significant number of cases where investigations have been undertaken and completed, no evidence of human trafficking has been found. However prosecutions are taken where any other offences are disclosed.

Prosecutions in themselves are not a fair measure of the effectiveness of law enforcement. Account must also be taken of

- policing measures aimed at prevention and creating a hostile environment for traffickers and



- international co-operation and information sharing resulting in a conviction in another jurisdiction for offences which took place in this jurisdiction.

The Blue Blindfold has a dedicated website [[www.blueblindfold.gov.ie](http://www.blueblindfold.gov.ie)] which is provided to encourage people to report suspicious activity or suspicions in the area of human trafficking. Since 1<sup>st</sup> January 2012 over 306 emails have been received at this website which is monitored on a daily basis by members of the Human Trafficking Investigation and Co-ordination Unit of the Garda National Immigration Bureau. Appropriate action is taken with regard to each email received and several investigations have been launched as a result of the Blue Blindfold.

Appendix C - Table

<b>COMPLIANCE WITH EU DIRECTIVE ON TRAFFICKING IN HUMAN BEINGS AS AT 26 OCTOBER 2012</b>	
<b>Article</b>	<b>Position</b>
<b>Article 1: Subject Matter</b>	No action required
<b>Article 2 Offences concerning trafficking in human beings</b>	Compliant
<b>Article 3 Incitement, aiding and abetting, and attempt</b>	Compliant
<b>Article 4 Penalties</b>	Compliant
<b>Article 5 Liability of legal persons</b>	Compliant
<b>Article 6 Sanctions on legal persons</b>	Compliant
<b>Article 7 Seizure and confiscation</b>	Compliant.
<b>Article 8 Non-prosecution or non-application of penalties to the victim</b>	Compliant
<b>Article 9 Investigation and prosecution</b>	Compliant. Updated training will be required and will be undertaken.
<b>Article 10 Jurisdiction</b>	We are not taking the minimalist approach. We will be compliant by changes made in the Criminal Justice Bill and by current procedures.
<b>Article 11: Assistance and support for victims of trafficking in human beings</b>	Compliant. DOJ and DHSSPS are considering whether further steps are necessary in relation to victim support, including whether there is a requirement for secondary legislation.
<b>Article 12: Protection of victims of trafficking in human beings in criminal investigation and proceedings</b>	Compliant
<b>Article 13: General provisions on</b>	DHSSPS has confirmed that Northern Ireland is compliant with Article 13.

Appendix C - Table

assistance, support and protection measures for child victims of trafficking in human beings	
Article 14: Assistance and support to child victims	DHSSPS has advised that Northern Ireland is compliant with Article 14.
Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings	DHSSPS has advised that Northern Ireland is compliant with the issues arising from Article 15.
Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings	DHSSPS has advised that Northern Ireland is compliant with Articles 16.1 to 16.3.
Article 17: Compensation to victims	DOJ – compliant with 16.4
Article 18 Prevention	Compliant.
Article 19 National rapporteurs or equivalent mechanisms	Compliant - further work will be undertaken in relation to training and awareness raising.
Article 20 Coordination of the Union strategy against trafficking in human beings	Compliant but will undertake further work on engagement with civil society.
Article 21: Replacement of Framework Decision 2002/629/JHA	Will be led by HO – input from devolved administrations will be sought as required
Article 22: Transposition	No action required
	Action is being taken to ensure compliance by April 2013.

Appendix C - Table

Article	Evidence	Position
<p><b>Article 1: Subject Matter</b> This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.</p>		No action required
<p><b>Article 2 Offences concerning trafficking in human beings</b></p> <p>2.1 Member States shall take the necessary measures to ensure that the following intentional acts are punishable: The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.</p>	<p>Provision currently in Sexual Offences Act 2003 in relation to sexual exploitation and Asylum and Immigration Act 2004 in relation to labour and other exploitation</p> <p>Two new offences to be created via Criminal Justice Bill and existing offence in relation to labour and other exploitation to be widened.</p> <p>The case of Siliadin v France defines 'enforced control'. Our legislation is compliant with this.</p> <p>The Criminal Justice Bill covers the elements of the human trafficking offences in article 2 of the EU Human Trafficking Directive. The words "arrange and facilitate" cover the offence elements in article 2 in the context of the 2003 Act. Section 4(4) of the 2004 Act goes further to define other exploitation and has been analysed and considered to cover all aspects of "slavery, servitude and forced or compulsory labour", as defined in article 4 ECHR. This analysis is supported by the similar approaches adopted to date in GB.</p>	Compliant
2.2 A position of vulnerability means a situation in which the person concerned		As above

Appendix C - Table

<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>has no real or acceptable alternative but to submit to the abuse involved.</p>		
<p>2.3 Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.</p>	<p>Forced begging constitutes exploitation within the offence of trafficking people for exploitation under section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.</p>	<p>As above</p>
<p>2. 4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.</p>		<p>We are compliant (Judge Burgess judgment in R v Matyas Pis refers)</p>
<p>2.5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.</p>		<p>Compliant</p>
<p>2.6 For the purpose of this Directive, 'child' shall mean any person below 18 years of age.</p>	<p>The Children (NI) Order 1995 provides that a child is a person under 18 years. The PPS draft Policy on Prosecuting cases of Human Trafficking which has been the subject of public consultation highlights that the Trafficking Convention provides that a child is any person under eighteen years of age.</p>	<p>Compliant</p>
<p><b>Article 3 Incitement, aiding and abetting, and attempt</b> Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is</p>	<p>Compliance through the Criminal Attempts and Conspiracy (NI) Act 1983, s.9 Criminal Law Act (NI) 1967 and s.8 Accessories and Abettors Act 1861</p>	<p>Compliant R v Chen included an aiding and abetting offence.</p>

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Article	Evidence	Position
punishable.		
<b>Article 4 Penalties</b>		
<p>4.1 Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.</p>		<p>We are compliant. The maximum sentence in the Crown Court is 14 years. Trafficking for sexual exploitation is additionally a serious offence within Schedule 1 of the Criminal Justice (NI) Order 2008 and a specified sexual offence within Schedule 2 of the Order and so, where the court considers that the offender poses a risk of serious harm, can attract either an indeterminate or extended custodial sentence, with future release determined by the Parole Commissioners.</p>
<p>4.2 Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:</p> <ul style="list-style-type: none"> <li>(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;</li> <li>(b) was committed within the framework of a criminal organisation within the</li> </ul>	<p>The relevant 14 years maximum imprisonment penalties of Sexual Offences Act 2003 provisions and the 2004 Act are compliant with the 10 years maximum penalty requirement under Article 4 of the Directive.</p>	<p>We are compliant. See above re sentencing provisions.</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ( 1 ); (c) deliberately or by gross negligence endangered the life of the victim; or (d) was committed by use of serious violence or has caused particularly serious harm to the victim.</p> <p>4. 3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.</p>	<p>The Sentencing Guidelines for Northern Ireland, which are available on the website of the Judicial Studies Board for Northern Ireland (“JSBNI”), confirm aggravating factors of general application. One such specific factor is - “The offender abused a position of power, a position of trust or a domestic relationship.” We have the legal precedent that an abuse of such positions of trust must be severely treated.</p> <p>As yet, no cases have come before the Northern Ireland Crown Court in relation to trafficking for labour or other exploitation. The Lord Chief Justice has put procedures in place to identify such cases if and when they do come before the Crown Court in order that sentencing guidance can be issued.</p> <p>Involvement of vulnerable victims, including children, are generally treated by the courts as being an aggravating feature of any given crime (see for instance paragraphs 70 – 71 in R v Chen).</p>	<p>Compliant.</p>
<p>4. 4 Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.</p> <p><b>Article 5 Liability of legal persons</b></p>		<p>Compliant</p>
<p>1. Member States shall take the necessary measures to ensure that legal persons can</p>	<p>The 2003 Act and the 2004 Act refer to persons, who commit the relevant offences. Clauses 5 and 6 of the Criminal Justice Bill make provision for the</p>	<p>Compliant</p>

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Article	Evidence	Position
<p>be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <p>(a) a power of representation of the legal person;</p> <p>(b) an authority to take decisions on behalf of the legal person; or</p> <p>(c) an authority to exercise control within the legal person.</p>	<p>liability of persons who commit offences in countries outside the United Kingdom. This legislation, which extends to NI, must be interpreted in accordance with the Interpretation Act 1978.</p> <p>A variety of interpretation definitions are set out in Schedule 1 to the Interpretation Act 1978. Schedule 1 ( Words and expressions defined) includes the definition:</p> <p><i>" Person " includes a body of persons corporate or unincorporate. "</i></p> <p>Where the 2003 Act and the 2004 Act refer to persons committing offences this includes companies. The Criminal Justice Bill is, therefore, compliant with the "legal persons" definition in article 5.</p>	
<p>5.2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.</p>		As above
<p>5.3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.</p>		As above
<p>5.4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public</p>		As above



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Article	Evidence	Position
<p>bodies in the exercise of State authority and for public international organisations.</p> <p><b>Article 6 Sanctions on legal persons</b></p> <p>Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:</p> <ul style="list-style-type: none"> <li>(a) exclusion from entitlement to public benefits or aid;</li> <li>(b) temporary or permanent disqualification from the practice of commercial activities;</li> <li>(c) placing under judicial supervision;</li> <li>(d) judicial winding-up;</li> <li>(e) temporary or permanent closure of establishments which have been used for committing the offence.</li> </ul> <p><b>Article 7 Seizure and confiscation</b></p> <p>Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.</p> <p><b>Article 8 Non-prosecution or non-application of penalties to the victim</b></p> <p>Member States shall, in accordance with the basic principles of their legal systems,</p>	<p>Article 6 requires that effective, proportionate and dissuasive sanction against legal persons/companies shall include criminal and civil fines and may include the other types of sanctions set out in paragraphs (a) to (e).</p> <p>The current and proposed offences provide for criminal fines where a legal person is convicted.</p> <p>As previously noted companies are already subject to a range of regulatory sanctions.</p>	<p>Compliant.</p>
<p><b>Article 7 Seizure and confiscation</b></p> <p>Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.</p>	<p>Article 11 of the Criminal Justice (NI) Order 1994 provides for power to seize property for any offence.</p> <p>Sexual Offences Act 2003 makes provision for the forfeiture of certain property</p> <p>The Proceeds of Crime Act 2002 provides for making of a confiscation order for certain offences.</p>	<p>Compliant.</p>
<p><b>Article 8 Non-prosecution or non-application of penalties to the victim</b></p> <p>Member States shall, in accordance with the basic principles of their legal systems,</p>	<p>Public Prosecution Service (PPS) - The issue of prosecutorial decisions in cases involving trafficked victims who have committed an offence as a result of being trafficked is addressed in the draft PPS Policy on Prosecuting Cases of Human Trafficking which was issued for public consultation and which will be published in early 2013. The policy includes reference to the Case of R v</p>	<p>Compliant</p>

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Article	Evidence	Position
<p>take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.</p>	<p>LM [2010] EWCA 2327 in which the court stated that prosecutors must consider the public interest in prosecution when the defendant is a trafficked victim and the crime has been committed when he or she was in some manner compelled to commit it. The Policy explains that PPS cannot provide blanket immunity from prosecution for victims of human trafficking. Every case must be considered on its own merit and having regard to the seriousness of the offence committed. However should evidence or information be available to the prosecutor to support the fact that the person has been trafficked and has committed the offence whilst in a coerced situation, this will be considered a strong public interest factor mitigating against prosecution.</p>	
<p><b>Article 9 Investigation and prosecution</b> 9. 1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement. 9.2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority. 9.3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.</p>	<p>The PPS will apply the Test for Prosecution in all cases referred to it by police regardless of whether the victim reports the offence, makes a statement or withdraws a statement. The Evidential and Public Interest Tests will be applied and if both are passed prosecution will be initiated or continued.  Prosecution for offences of human trafficking for sexual or other forms of exploitation are not subject to statutory time limits regarding the initiation of criminal proceedings.</p>	<p>Compliant</p> <p>Compliant</p>
	<p>All prosecutors have received training on the provisions contained within the Sexual Offences Act 2003 on trafficking for sexual exploitation. Further training on human trafficking, including for labour and other exploitation, will be carried out when the PPS Policy is published in 2013. Prosecutions involving human trafficking are dealt with by Senior Prosecutors in PPS Central Casework section which is a specialist section that deals with</p>	<p>Updated training on Articles 2 and 3 procedures will be implemented to comply with Article 9(3).</p>

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Article	Evidence	Position
	<p>complex cases. Prosecutors within Central Casework section have received additional training and awareness in relation to human trafficking. It is anticipated that further training will be provided to prosecutors when the PPS Policy on Prosecuting Cases of Human Trafficking is issued.</p> <p>The Judicial Studies Board (JSB) is responsible for judicial training. The Board runs study programmes and training workshops for the judiciary and issues written material to all judges. The JSB held a training event on trafficking human beings for the judiciary in October 2010, and a copy of the training materials is given to all judges appointed since then. Judge Burgess in 2012 in the R v Pis case, set out guidance, including mitigating and aggravating factors in relation to offences for human trafficking for sexual exploitation. As yet, no cases have come before the Northern Ireland Crown Court in relation to trafficking for labour or other exploitation but the Lord Chief Justice has put procedures in place to identify such cases if and when they do in order that sentencing guidance can be issued.</p>	
<p>9. 4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.</p>	<p>Complex cases of human trafficking are expected to be dealt with by specialist prosecutors in the PPS Central casework section.</p> <p>PSNI have appointed a Senior Officer within Organised Crime Branch as Service Lead for Human Exploitation (Trafficking and Vice), to ensure that investigative support is provided across the organisation and to ensure that specialist resources can be utilised when necessary.</p> <p>PSNI have investigative powers and seizure powers available. Powers are also available under Regulation of Investigatory Powers Act 2000.</p>	<p>PSNI has not identified any weakness in the current powers in relation to investigating human trafficking offences.</p>
<p><b>Article 10 Jurisdiction</b>                      10.1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:                      (a) the offence is committed in whole or in</p>	<p>Two new offences to be created the Criminal Justice Bill and existing offence in relation to labour and other exploitation to be widened.</p>	<p>We will be compliant by changes made in the Cj Bill.</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>part within their territory; or                      (b) the offender is one of their nationals.</p> <p>10.2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:</p> <p>(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;                      (b) the offence is committed for the benefit of a legal person established in its territory; or                      (c) the offender is an habitual resident in its territory.</p>		<p>The clauses in Criminal Justice Bill implement article 10(2) for NI.</p>
<p>10.3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:</p> <p>(a) the acts are a criminal offence at the place where they were performed; or                      (b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.</p>		<p>The legislation in NI provides that an act will be regarded as a criminal offence if it would be so regarded according to NI law.</p> <p>Current PPS policy accords with 10.3(b)</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p><b>Article 11: Assistance and support for victims of trafficking in human beings</b></p> <p>11.1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.</p>	<p>DOJ Community Safety Unit funds a Support Service for Potential Adult Victims of Human Trafficking (PVHT) which provides for a minimum 45 day recovery and reflection period. All potential victims of trafficking are able to access support and assistance while their status is considered and investigated. Support is tailored to individual's needs to take account of safety and protection and includes access to medical care, counselling and other support services. Once a positive Conclusive Decision is made by the Competent Authority the victim has recourse to public funds and may apply for relevant benefits.</p> <p>Where trafficked victims are able to exercise Treaty rights or have been given discretionary leave to remain, they will normally be able to apply for relevant social security benefits and housing assistance and will be entitled to access health and social care.</p> <p>Article 11.1 refers to a Framework Decision (FD) which relates to victims in criminal proceedings. Criminal proceedings cannot be pursued until the PVOT has been identified as a victim of crime. In practice, in Northern Ireland, all PVOTs are able to access support and assistance while the trafficking claim is being considered and investigated. Effectively support and assistance starts from the day of contact with the law enforcement agency.</p> <p>We are compliant with the provisions in the FD. The FD will be replaced shortly by the Directive establishing minimum standards on the rights, support and protection of victims of crime. This is expected to be published in November and we will have three years to become compliant with its provisions.</p> <p>A 24 hour referral line is available and processes are in place to ensure that</p>	<p>DOJ and DHSSPS are considering further steps in relation to victim support, including a duty in legislation.</p>
<p>11.2. Member States shall take the</p>		<p>See above</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.</p> <p>11.3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to <sup>1</sup>Directive 2004/81/EC or similar national rules.</p>	<p>victims can access appropriate support as soon as practicable. The Support Service often assists planned law enforcement operations when intelligence indicates PVHT may be identified. This ensures support is offered at the earliest opportunity.</p> <p>No co-operation is required for the initial 45 day recovery and reflection period when support is provided. While full engagement with the criminal justice system leading to prosecutions is the preferred outcome, victims may choose to engage with Law Enforcement agencies at a variety of levels from full evidential cooperation, intelligence giving cooperation or no engagement at all. The victim must sign the agreement that their details can be shared and be referred to the UK Human Trafficking Centre. (UKHTC)</p>	<p>See above</p>
<p>11.4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.</p>	<p>The Support Service have organised conferences/workshops on human trafficking with emphasis on 'Community awareness'. Invited delegates included representatives of community and faith group organisations in Northern Ireland. The Blue Blindfold public awareness campaign, with the Crime Stoppers contact number, has been promoted at these events. Information and guidance is also available on the NI Direct website which contains details on signs of human trafficking, a link to the Blue Blindfold campaign and contact numbers for members of the public. Multi-lingual leaflets 'Visitor or Victim' have been displayed at ports, airports, stations and doctor's surgeries. The Department is working with Amnesty International to produce a multi-lingual leaflet for victims.</p>	<p>See above.</p> <p>Further work is planned as part of the Changing the Mindset' project and on engagement with NGOs.</p> <p>The NRM sets out the procedures for identifying victims.</p>

<sup>1</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>11.5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.</p> <p>11.6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ( 1 ) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and</p>	<p>Training is another important aspect which is being enhanced. All support and guidance is offered on an informed and consensual basis. Victims are empowered and encouraged to make informed decisions for themselves based on information about their rights and entitlements. A victim may also choose to accept some elements of the support for example; they may not require accommodation if this is something they already have access to but may still require advice and guidance. A victim centred approach is provided by the Support Service.</p>	<p>See above re secondary legislation</p>
<p>11.6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ( 1 ) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and</p>	<p>Victims are given structured support from Government and other organisations (i.e. the National Referral Mechanism); this may include being given time to consider the options available without fear of being removed from the country, finding a safe place to live, someone to talk to, legal advice and other assistance (the Reflection and Recovery period).</p> <p>At present the engagement with international partners is conducted through Europol / Interpol where the country concerned can be informed and an assessment regarding protection requirements / facilitated return etc can be arranged. This is normally at the request of the victim.</p> <p>Within the Conditions of Contract for the Support Services for Adult PVOTs, the Service Requirements refer: 'signposting to immigration and independent legal advice should be available to victims..'. The service provider also has a</p>	<p>See above</p>

<sup>2</sup> OISC – Office of the Immigration Services Commissioner

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Article	Evidence	Position
<p>withdrawing refugee status ( 2 ) or pursuant to other international instruments or other similar national rules.</p>	<p>'Protocol with the PSNI in respect of victim support services in relation to HT' in which one of the responsibilities of the provider is 'Assistance in regularising immigration status and obtaining relevant documents'. All frontline staff in the service provider are accredited to OISC<sup>2</sup> level I; this qualification enables frontline staff to give initial advice on immigration matters; should more detailed information be required, queries are referred to higher qualified areas – See 12.2.</p>	
<p>11.7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.</p>	<p>Every PVHT is treated as an individual and his or her needs are assessed on an individual basis. The victim is treated with respect and in a non judgmental manner. When an assessment indicates particular or high level needs, the Support Service will work with specialist agencies to address those needs. This multi-agency approach ensures the most appropriate care and services are provided to the PVHT.</p>	<p>See above.</p>
<p><b>Article 12: Protection of victims of trafficking in human beings in criminal investigation and proceedings</b></p>		
<p>12.1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.</p>	<p>PACE Codes provide statutory safeguards.</p> <p>We are compliant with the provisions in the Framework Decision (FD) 2001/220/JHA - the FD on the Standing of Victims in Criminal Proceedings. The FD will be replaced shortly by a Directive establishing minimum standards on the rights, support and protection of victims of crime. This is expected to be published in November and we will have three years to become compliant with its provisions</p>	<p>Compliant</p>
<p>12.2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including</p>	<p>Upon arrival to the Support Service PVHT are assessed to identify previous experiences, immediate needs and ongoing needs. Immigration matters can cause anxiety to victims so good links with legal advisors and sign posting these services to PVHT is vital. The Support Service make appointments on behalf of the PVHT and can attend the legal appointments if the victim wishes. The legal advisor will advise on compensation claims if appropriate.</p>	<p>Compliant</p>



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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.</p>	<p>Legal representation with legal aid is available through the Northern Ireland Legal Services Commission. Legal advice and assistance is available for any point of Northern Ireland law.</p> <p>DOJ funds the Law Centre to provide advice and assistance on immigration matters, and that contact has been extended for a further year (cost approx £200k).</p> <p>The legislation governing civil legal aid here is the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981. The legal aid scheme here is more generous in terms of provision for personal injury litigation than is the case in England and Wales, as legal aid is available to all persons to pursue compensation claims through the courts, where they qualify under the rules governing financial eligibility.</p> <p>Legal advice and assistance is available in Northern Ireland for employment law issues. While employment tribunals are not within the normal scope of legal aid in this jurisdiction, a victim who required recourse through the employment tribunal - as opposed to the courts - could apply for legal representation at the employment tribunal through the exceptional grant scheme. This scheme allows legal aid to be granted for representation for matters which are outside the scope of legal aid.</p>	
<p>12.3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.</p>	<p>Each incident /investigation involving a Potential Victim of Human Trafficking is subject to risk assessment considering the level of threat and risk that may exist in respect of each individual. This assessment will then assist in determining the appropriate protection measures that should be engaged, including if necessary access to Witness Protection Programmes.</p>	<p>Compliant</p>
<p>12.4. Without prejudice to the rights of</p>	<p>The Criminal Evidence (NI) Order 1999 provides for Special Measures for</p>	<p>Compliant but current</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:</p> <ul style="list-style-type: none"> <li>(a) unnecessary repetition of interviews during investigation, prosecution or trial;</li> <li>(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;</li> <li>(c) the giving of evidence in open court; and</li> <li>(d) unnecessary questioning concerning the victim's private life</li> </ul>	<p>‘vulnerable; or ‘intimidated’, witnesses to assist them to give their best evidence. If determined eligible by the court, victims may have their evidence in chief recorded by police during the investigation stage which can be used as their evidence in chief at trial thus avoiding them having to repeat the account. Cross examination may be conducted using video line thus the victim does not have to enter the court room. Further screens may be used to screen the victim. Aids to communication may also be provided as the court considers appropriate with a view to enabling questions or answers to be communicated by or to the victim or witness.</p> <p>Provision is made by the Coroners and Justice Act 2009 for a witness to give evidence anonymously where the court is satisfied: that this is necessary to protect the safety of the witness; that it is consistent with the fair trial of the defendant and that it is in the interests of justice for the witness to give evidence. A witness anonymity order can allow for one or more of the following; the witness's name and other identifying details to be withheld or removed; from materials disclosed to any party to the proceedings; that the witness may use a pseudonym; that the witness is not asked questions of any specified description that might lead to the identification of the witness; that the witness is screened to any specified extent; that the witness's voice to be subject to modulation to any specified extent.</p> <p>Victims of rape and serious sexual offences are entitled as a matter of law to anonymity in the media, even if their name has been given in court. Courts can impose reporting restrictions under section 46 of the Youth Justice and Criminal Evidence Act 1999 to restrict media coverage of cases that reveal a witness's identity and may create safety issues. Article 12(4)(d), Article 28 of the 1999 Order provides for restrictions on evidence and circumstances about the complainant's sexual behaviour. The Order restricts the circumstances in which the defence can bring evidence about the sexual behaviour of a complainant in cases of rape and other sexual offences.</p> <p>Where a victim wishes to remain in their home country, the prosecutor can</p>	<p>measures will be further enhanced when DOJ amends the “Achieving Best Evidence in Criminal Proceedings” Guidance to specify human trafficking victims as falling within the definition of “intimidated”.</p> <p>DOJ also plan to include a specific section on human trafficking victims in guidance on working with intimidated witnesses which will be brought forward in 2013.</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p><b>Article 13: General provisions on assistance, support and protection measures for child victims of trafficking in human beings</b></p>	<p>make an application under Article 80A of the Police and Criminal Evidence (Northern Ireland) Order 1989 for them to give evidence via a video link from there.</p>	<p>DHSSPS has confirmed that NI is fully compliant with Article 13 and is of the view that further statutory provision is not required.</p>
<p>13.1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.</p>	<p>Recovered child victims of trafficking are deemed to be "children in need" under the Children (NI) Order 1995 and therefore the responsibility for provision of care and support to these children, including access to health and social care, falls to HSC Trusts. A child victim of human trafficking has by definition suffered abuse. A HSC Trust should always consider making an application for an Emergency Protection Order (EPO) under article 63 of the Children (NI) Order 1995 or an interim care order under article 57 of the Children (NI) Order 1995.</p>	<p>See above</p>
<p>13.2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.</p>	<p>The judgment, handed down by Judge Burnton in the case of <i>B v London Borough of Merton</i> [2003] EWHCA 1689 has been superseded; <i>R(F2) v London Borough of Croydon</i> (2008). This judgment clarifies that it is for the Court to determine the age of victims; social services should always carry out a 'Merton Compliant Age Assessment' to assist the court in its deliberations.</p> <p>The PPS draft policy highlights that the United Nations Convention on the Rights of the Child states, "when the age of the victim is uncertain and there are reasons to believe that the victim is or may be a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age".</p> <p>The PPS draft Policy makes reference to the 'Merton Compliant Age Assessment' procedures under which Social Services must carry out an assessment to assist the Court in its deliberations in any 'age-disputed' case.</p>	<p>See above</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p><b>Article 14: Assistance and support to child victims</b></p>		<p>DHSSPS has confirmed that NI is fully compliant with Article 14 and is of the view that further statutory provision is not required. ..</p>
<p>14.1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.</p>	<p>All trafficked children and those suspected of being trafficked are deemed to be children in need. The Trust is required to undertake a full assessment on such children's needs. A Trust should always consider making an application for a Legal Order to establish "parental responsibility" in respect of the child and ensure that appropriate measures are put in place to safeguard and promote his / her welfare. When a child becomes "looked after" by a HSC Trust, that child is deemed to be "ordinarily resident" in the jurisdiction.</p>	<p>See above</p>
<p>14.2. Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a</p>	<p>The Children (Northern Ireland) Order 1995 provides for the appointment by a Health and Social Care Trust of an independent visitor for a looked after child in circumstances where the child has no or infrequent contact with a parent or any person who has parental responsibility for him. The person appointed by the Trust will have the duty of visiting, advising and befriending the child. In the case of former looked after children between the</p>	<p>See above</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.</p>	<p>ages of 16 and 21 (children who have left the care system), a Health and Social Care Trust is required to appoint a personal adviser for the young person and prepare a pathway plan for him/her. The Trust is also required to carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate to provide him with.</p> <p>In addition, the DHSSPS proposes to place the provision of advocacy services on a statutory basis for those children and young people who are, or have been, looked after. Provision will be made in an Adoption and Children Bill, which will be introduced in the Northern Ireland Assembly in the current mandate.</p> <p>When an application is made for an Order under article 63 or 57 of the Children (NI) Order 1995, a Guardian ad Litem is appointed by the court to independently represent the young person's interests. The Guardian ad Litem appoints an independent legal representative to act on behalf of the child and further represent his interests.</p>	
<p>14.3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.</p> <p>14.4. This Article shall apply without prejudice to Article 11.</p> <p><b>Article 15: Protection of child victims of trafficking in human beings in criminal investigations and proceedings</b></p>	<p>All child victims of human trafficking and those suspected of being trafficked are deemed to be a child in need (particularly a child in need of protection) under the provisions of Article 17 of the Children (Northern Ireland) Order 1995. Article 18 of the Children Order requires that Trusts shall, as far as is consistent with its duty to safeguard and promote the welfare of childcare, promote the upbringing of such children by their families by providing a range and level of personal social services appropriate to that child's needs.</p> <p>Article 4 of the FD is the right to receive information. The parent/ carer receives this information on behalf of the child.</p>	<p>See above</p>
		<p>See above</p> <p>DHSSPS has confirmed that NI is fully compliant with issues arising from Article 15 and is of the view that further statutory</p>

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Article	Evidence	Position
<p>15.1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.</p> <p>15.2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.</p> <p>15.3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:</p> <p>(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;</p> <p>(b) interviews with the child victim take place, where necessary, in premises</p>	<p>See also 14.2. Any young person who is trafficked or suspected of being trafficked shall be allocated a social worker, and upon application by the Trust to the Court to secure a legal Order in respect of the child, a guardian ad litem and, subsequently, a legal representative; each of whom may in circumstances act as a representative for the child.</p> <p>Note – representative does not mean ‘legal representative’.</p> <p>A child who is “looked after” by a Health and Social Care Trust is “ordinarily resident” within the jurisdiction and a social worker, guardian ad litem and a legal representative are appointed to represent his interests.</p>	<p>provision is not required. . .</p>
<p>15.3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:</p> <p>(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;</p> <p>(b) interviews with the child victim take place, where necessary, in premises</p>	<p>The Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse Northern Ireland (September 2004) – which is currently being reviewed, specifies the arrangements for joint investigation and provides guidance to ensure investigative actions meet the requirements listed at (3).</p> <p>Achieving Best Evidence (ABE) In Criminal Proceedings Guidance On Interviewing Victims And Witnesses, The Use Of Special Measures and The Provision Of Pre-Trial Therapy (May 2011) gives further detailed guidance in relation to the conduct of investigative interviews and the assistances that can be made available to victims/witnesses throughout the process.</p>	<p>As above.</p> <p>As above</p>

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Article	Evidence	Position
<p>designed or adapted for that purpose;EN 15.4.2011 Official Journal of the European Union L 101/9 (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose; (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim; (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings; (f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.</p>	<p>The child's choice may be limited by professional considerations i.e. an interpreter of the child's choice may mis-represent the process. Careful consideration should always be given to how children will be represented and the bona-fides of representatives should be agreed by professional staff involved with the child/young person</p>	
<p>15.4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.</p>	<p>Provided for by The Criminal Evidence (NI) Order 1999 (as amended by Section 7 The Justice Act (NI) 2011 on 1 January 2012).  Any interview of a child who is suspected to be a Potential Victim Of Human Trafficking, will be subject of "Achieving Best Evidence" (ABE) interview. These will also be conducted in accordance with existing joint protocol arrangements.  See also 12.4 - There is a presumption that children will always have their evidence in chief video recorded and that further evidence will be given by live link unless they choose not to give their evidence this way.</p>	Compliant.
<p>15.5. Member States shall take the necessary measures to ensure that in</p>	<p>Provided for by The Criminal Evidence (NI) Order 1999 (as amended by Section 7 The Justice Act (NI) 2011 on 1 January 2012).</p>	Compliant.

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:</p> <p>(a) the hearing take place without the presence of the public; and</p> <p>(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.</p> <p>15.6. This Article shall apply without prejudice to Article 12.</p>		
<p><b>Article 16: Assistance, support and protection for unaccompanied child victims of trafficking in human beings</b></p> <p>16.1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.</p> <p>16.2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.</p> <p>16.3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to</p>		<p>DHSSPS has confirmed that NI is fully compliant with Articles 16.1 to 16.3.</p> <p>See above</p> <p>See above</p> <p>See above</p>
	<p>A child who is trafficked or suspected of being trafficked is entitled to the full range of provisions under the Children (NI) Order 1995 which requires the Trust to take account of the personal and special circumstances of any such child.</p>	
	<p>A full and comprehensive assessment of a child victim should always be undertaken in accordance with Child in Need Guidance and UNOCINI</p>	
	<p>A named social worker should always be appointed to assess the needs of unaccompanied child victims of trafficking in human beings and, once an application is made to a court for a legal order to secure parental</p>	



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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>unaccompanied child victims of trafficking in human beings.</p>	<p>responsibility in respect of any such child, a guardian ad litem and an independent legal representative are appointed to represent the child's interests. See also 14.2</p>	
<p>16.4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.</p>	<p>Under PACE "Appropriate Adults" may be appointed to safeguard the interests of a child. Also see 16.3.</p>	<p>Compliant</p>
<p>16.5. This Article shall apply without prejudice to Articles 14 and 15.</p>		
<p><b>Article 17: Compensation to victims</b> Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.</p>	<p>The Criminal Injuries Compensation (Northern Ireland) Order 2002 provides for the payment of compensation to victims of crime who have sustained criminal injury. It includes compensation for crimes that may be committed as a result of human trafficking</p> <p>The Department of Justice currently funds a scheme delivered by Victim Support Northern Ireland that provides free assistance and support with the application process. (<a href="http://www.nidirect.gov.uk/compensation-for-victims-of-crime">www.nidirect.gov.uk/compensation-for-victims-of-crime</a>). Assistance is currently available to applicants through Victim Support NI (<a href="http://www.victimsupportni.co.uk/what-we-do/compensation">http://www.victimsupportni.co.uk/what-we-do/compensation</a>).</p> <p>Compensation Orders may also be awarded by the court upon conviction.</p>	<p>Compliant. A guidance note on compensation for victims of human trafficking will be issued by the Chief Executive of the Compensation Agency to Agency staff.</p> <p>Guidance on claiming compensation will be included in the victims' leaflet being developed by the Department and Amnesty International.</p>
<p><b>Article 18 Prevention</b></p>		
<p>18.1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in</p>	<p>See below and 18.3</p>	<p>The OCTF's Immigration and Human Trafficking Subgroup is to carry out work on a training needs analysis.</p>

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Article	Evidence	Position
<p>human beings.</p> <p>18.2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.</p>	<p>The Support Service have organised conferences/workshops on human trafficking with emphasis on 'Community awareness'. Invited delegates included representatives of many community and faith group organisations in Northern Ireland. The Blue Blindfold public awareness campaign, with the Crime Stoppers contact number, has been promoted at these events. The Support Service have also assisted in other events delivered to statutory and non statutory organisations.</p> <p>The Minister of Justice announced on 18 October 2012 the establishment of a new Engagement Group involving DoJ, other statutory bodies, and non-governmental organisations.</p> <p>Information and guidance is also available on the NI Direct website which contains details on signs of human trafficking, a link to the Blue Blindfold campaign and contact numbers for members of the public. Visitor or Victim's multi-lingual leaflets at ports, stations, airports, doctor's surgeries</p> <p>Guidance on working with child victims was issued in 2011; guidance on working with adult victims was published jointly by DOJ and DHSSPS in October 2012.</p>	<p>Compliant, but further work is planned on raising awareness and on engagement with civil society.</p>
<p>18.3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.</p>	<p>PSNI have introduced a mandatory on line training package for all police officers to assist in recognising the signs and indicators of Human Trafficking. 2800 PSNI officers and staff have completed the training. In addition, joint training for Investigators has occurred with partners within An Garda Síochana.</p> <p>All prosecutors have received training on the provisions contained within the Sexual Offences Act 2003 on trafficking for sexual exploitation. Prosecutions involving Human trafficking are dealt with by Senior Prosecutors in PPS Central Casework section which is a specialist section that deals with complex cases. Prosecutors within Central Casework section have received additional training and awareness in relation to human trafficking.</p>	<p>The OCTF'S Immigration and Human Trafficking Subgroup is to carry out work on a training needs analysis.</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
	<p>Training for professional staff in relation to victims of human trafficking (adult and children) is currently being considered by the HSCB.</p> <p>NRM training and guidance for front line staff and Competent Authority decision makers in the UK Border Agency, Border Force, and the UK Human Trafficking Centre has been delivered.</p> <p>The contract for the provision of support services to PVOTs requires that 'The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body.' It also states that 'the Contractor shall ensure that all staff supplying the services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience necessary for the proper supply of services'. The contractor delivers regular in-house training and coaching to support workers on specific issues and all staff are required to meet the standards of the 'Office of Immigration Services Commissioner'. This accreditation is achieved by demonstration of competency in both written and oral assessments and tests, and qualifies their staff to provide specialist advice. The work of each support worker is then audited on a regular basis to identify further training needs.</p> <p>With regards to the sub-contractor, Women's Aid, initial trafficking training was delivered with further training through NOMS and other conferences. In addition, Domestic Violence Awareness Level 111 training is compulsory for all staff and volunteers; this training is reviewed annually to ensure incorporation of new initiatives. The contractor for the support services for PVOTs has recently offered refresher training, specifically for Trafficking, to their sub-contractor and that this is being taken forward locally.</p>	
<p>18.4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking</p>	<p>Provision under article 64A of the Sexual Offences (NI) Order 2008, which is a strict liability offence, in that no knowledge is required.</p> <p>Gangmasters legislation in place.</p>	<p>Compliant.</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
<p>measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.</p> <p><b>Article 19 National rapporteurs or equivalent mechanisms</b> Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.</p>	<p>United Kingdom wide Inter Departmental Ministerial Group on Human Trafficking carrying out this role. The first annual report was published in October 2012.</p> <p>New Engagement Group announced by Minister of Justice on 18 October 2012 to include DoJ, other statutory bodies and non-governmental organisations.</p>	<p>Compliant.</p>
<p><b>Article 20 Coordination of the Union strategy against trafficking in human beings</b> In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against</p>		<p>Will provide input to United Kingdom response.</p>

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Article	Evidence	Position
<p>trafficking in human beings.</p> <p><b>Article 21: Replacement of Framework Decision 2002/629/JHA</b> on combating trafficking in human beings is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decision into national law. In relation to Member States participating in the adoption of this Directive, references to the Framework Decision 2002/629/JHA shall be construed as references to this Directive.</p> <p><b>Article 22: Transposition</b></p>		<p>No action required</p>
<p>22.1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.</p>		<p>Action is being taken to ensure compliance by April 2013.</p>
<p>22.2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.</p>		<p>Will provide input to United Kingdom-wide response.</p>
<p>22.3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down</p>		<p>Noted.</p>

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<b>Article</b>	<b>Evidence</b>	<b>Position</b>
by the Member States.		

**Appendix D**

**AMENDMENTS TO THE SEX OFFENDER PROVISIONS IN THE CRIMINAL JUSTICE BILL**

**Summary**

<b>Business Area:</b>	Criminal Policy and Legislation Division, Access to Justice Directorate
<b>Issue:</b>	Amendments to the Sex Offender provisions in the Criminal Justice Bill
<b>Restrictions:</b>	None.
<b>Action Required:</b>	For Committee evidence session on 8 November.
<b>Officials Attending for clauses 5 and 6:</b>	Gareth Johnston, Deputy Director Criminal Policy and Legislation Division Amanda Patterson Criminal Policy and Legislation Division

**Purpose of paper**

The purpose of this paper is to provide the Justice Committee with final policy proposals on two issues for the Criminal Justice Bill. First is an additional sex offender notification provision which we intend to include in the Bill by amendment at Consideration Stage. Second is an amended version of Clause 3 of the Bill, to take account of the Executive's wish to see an alternative option for attaching notification to offenders with convictions from outside the United Kingdom.

**Background**

2. The Committee is aware of the general background. A public consultation was carried out between 6 July and 5 October last year on proposals to establish a review mechanism for indefinite sex offender notification and on ways to make more effective the overall notification

arrangements. A summary of responses to the consultation was provided for the Committee at its meeting on 17 October 2011.

3. A list of all the policy proposals consulted on is attached at the end of this document (**Annex A**). Of these, the first four have already been included in the Criminal Justice Bill on introduction. The fifth, notification of travel within the UK, was earmarked for inclusion in the Bill at a later stage, when policy had been fully developed. This paper provides the Committee with the outcome of that policy development and seeks the Committee's views on the proposals for inclusion in the Bill at Consideration Stage.

4. As indicated in the list, it is also intended to bring forward the remaining changes to the law by means of secondary legislation, as provided for by the Sexual Offences Act 2003, and it is intended to submit an SL1 to the Committee around the end of the year to allow the package of changes to take effect at the same time as the Criminal Justice Bill receives Royal Assent.

5. The final measure listed in annex A, the introduction of violent offender orders, is due for inclusion in the Faster, Fairer Justice Bill. A paper seeking the Committee's views on final policy will be submitted in November to allow for drafting of the provisions in line with the timetable for the introduction of the Bill next year.

**Additional clause: notification requirements for sex offenders who travel within the United Kingdom**

6. We are seeking to add, by amendment at Consideration Stage, a provision to the sex offender notification clauses of the Criminal Justice Bill which will make it necessary for a sex offender to notify the police if he plans to be away from his home address for more than three days without leaving the UK.



7. Part two of the Sexual Offences Act 2003 (“the 2003 Act”) sets out the requirements for certain convicted sex offenders to register their names and addresses with the police, to notify police of any changes to that information, and to provide other information relating to their whereabouts and other personal details. The provisions also apply to those who are found not guilty by reason of insanity, or to be under a disability but to have committed the act in question; and to those cautioned.

8. Under the current provisions, relevant offenders must notify the police when they intend to travel for more than three days outside of the UK or, where they have stayed at an address within the UK which isn’t their home address for a period of seven days or two or more periods in any 12 months which add up to seven days, the address of those other premises. The police have asked that we add to these requirements a further duty to notify them of any planned period of travel away from their home address for more than three days if the travel is within the UK. We will also want to change, by secondary legislation, so not included here, the foreign travel requirement so that an offender has to notify *all* travel outside of the UK and not just travel of three days or more, except in the case of travel to Ireland.

### **Current legislation**

9. Part 2 of the 2003 Act sets out the requirements placed on certain sex offenders (relevant offenders) once they have been convicted of an offence listed in Schedule 3 to the Act.

10. Certain initial information must be provided to the police within three days of conviction, disregarding any subsequent period of imprisonment. There is also provision for notifying the police of changes to that information. In relation to his home address, an offender must

notify any change, or the address of any premises where he has stayed for a 'qualifying period'. A qualifying period is then defined as a period of seven days, or two or more periods in any 12 months which taken together amount to seven days.

11. Section 86 provides a power for the Department to make regulations requiring offenders to notify details about travel outside the UK. The Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004 ("the 2004 Regulations") require a relevant offender to provide specific information about plans to travel outside the UK for three days or longer.

12. There is no provision which requires a relevant offender to provide information to the police if he intends to leave his home address for any period to time to travel within the UK where he does not remain at another address for a qualifying period.

### **The problem**

13. The police have asked us to consider the inclusion of a provision which would require offenders who travel within the UK to notify the police of their planned whereabouts/itinerary. As stated above, offenders are currently required to notify the police within three days of staying at a different address for a qualifying period of seven days or more or two or more periods in any 12 months which, if taken together, amount to seven days at that address. They must also notify the police in advance of any planned travel abroad of more than three days. What they don't have to notify are periods of travel away from their home address if they stay within the UK and don't spend more than seven days at a particular address. This means that time spent travelling around and using different B&Bs or a caravan does not need to be notified to the police.

14. The police brought this issue to our attention because of an offender they had difficulty keeping track of who travelled around the UK but didn't stay at one address long enough to have to notify under the current qualifying period of seven days at another address. They felt that legislation on foreign travel makes it more difficult for offenders to travel abroad to offend, but does not adequately deal with travelling within the UK to offend.

15. Travel to Ireland will be excluded from the amendment we are proposing to make by secondary legislation for the notification of *all* foreign travel outside of the UK ie no matter what the intended duration. It is recognised that such a requirement for cross border travel would be impractical, therefore we are proposing that notification of cross border travel remains unchanged at three days and is provided for under the requirement to notify absences from home for three days or longer.

### **The position in the other UK jurisdictions**

16. This proposal is unique to Northern Ireland. We have consulted with colleagues in England and Wales and in Scotland, but it has not been raised as a particular issue by the police forces in those jurisdictions. In addition, there has not been any recent opportunity to amend the law there as this provision can only be added by primary legislation and not through the secondary route - which allowed all the other changes to be made at Westminster. However, it may be that interest will be sparked if the law is changed here.

### **Consultation**

17. This proposal was included in the consultation paper which was issued in July 2011. The police again reinforced their view that a new provision was needed to address what they perceived to be a loophole in

the current legislation i.e. where a sex offender can use a series of addresses, for up to 6 days in each case, without notifying the police. Only four other respondents made specific comments about this proposal. Three were supportive and one, NIACRO, injected a note of caution in regards to proportionality.

### **The case for change**

18. It could be argued, as raised in the consultation responses, that, for an offender who has recurring and regular travel commitments within the UK, the impact of such a requirement on the individual may be disproportionate to the effectiveness of the measure on public protection/crime investigation etc.

19. However, the police have provided us with information on cases where they were unsighted as to the whereabouts of particular offenders due to the ability to travel within the UK and not to notify that information to the police unless it involves an address where the person stays for at least seven days. One particular offender travelled to England for a number of weeks using a touring caravan and the police did not know where he was, and were not entitled to know under current legislation.

20. Other examples of where such provision may have been effective in the investigation of crime, and possibly prevention of crime, are in cases, such as that of Robert Black, where an individual travels widely and frequently within the UK in connection with his work but does not stay at one address long enough to warrant notification to the police.

### **The legislative proposal**

21. We are, therefore, seeking a provision for addition to the Criminal Justice Bill at Consideration Stage which will amend the 2003 Act. The

provision will require a relevant offender to notify the police as soon as reasonably practicable, but not less than 12 hours before leaving his home address, of periods when he plans to be away from his home address, but within the UK **or Ireland**, for more than three days. The information to be provided should be:

Date or dates of departure

Method of travel

Initial destination and any subsequent places of stay, along with intended dates

Accommodation arrangements

Date or dates of return.

22. If a relevant offender plans to be away from his home address on a regular basis for a number of periods of three days or more the provision will allow him to give notification of all these planned absences at the same time. We want to ensure that someone who has to travel regularly in connection with work or for family reasons etc can do so without necessarily having to make individual notifications for every period of travel.

### **Conclusion**

23. This proposed change to the law on sex offender notification reflects a policy desire to develop and strengthen further the notification requirements and to address issues raised by our practitioners, particularly the police.

**Amendment to clause 3: offences committed in an EEA State other than the United Kingdom**

24. The Committee will be aware that the Executive did not support the provision in the Bill which places statutory notification on offenders with convictions from another EEA state who come to Northern Ireland for a period of more than seven days. This limitation to EEA states was included in the provision on the advice of the Attorney General, whose view it was that the Bill would not be compliant with ECHR obligations, and therefore outside Assembly competence, if the statutory requirement was placed on offenders from all states outside the UK. This advice was based on the possibility that an individual from a state with poor human rights standards may have been convicted of a sexual offence by virtue of human rights abuses or a gross miscarriage of justice.

25. However, the Executive made clear that they could not support the introduction of the Bill unless a commitment was given by the Minister to bring forward an amendment to allow for a single, enhanced process for attaching notification to offenders with convictions from outside the UK.

26. In the Minister's speech at second stage of the Bill he gave such a commitment and said that we would work with the Attorney's Office and the Justice Committee during the passage of the Bill to achieve that end.

**Options for change**

27. We looked at a number of options in terms of how to deal with the Attorney's concerns. These are set out in **annex B**, along with reasons for and against their adoption.

28. We have discussed these options with the Attorney and he has recommended the following procedure as being ECHR compliant and

which also addresses the concerns expressed by the Executive prior to the Bill's introduction:

- There will be one procedure for offenders in Northern Ireland with convictions from countries outside the UK.
- This procedure will place a statutory requirement on such offenders to notify the police after being in residence here for 7 days. They will have three days to make that notification.
- The following safeguards will then apply:

(i) It will be a defence to any charge of failure to comply with notification to prove that the original conviction which is the basis for notification fell so short of convention standards that the court cannot be satisfied that it can safely be relied on as evidence that the person committed the offence.

(ii) There will be a right of application to the High Court for removal of the requirement to notify if the person can prove that the original conviction which is the basis for notification fell so short of convention standards that the court cannot be satisfied that it can safely be relied on as evidence that the person committed the offence.

This twin approach seems to cover the points. An offender can choose to comply with notification and then seek to have the requirements discharged by the court if he believes his conviction from the other country was obtained by abuse of Convention rights. Similarly if an offender is charged with an offence of failure to comply he can deploy the defence to prove his conviction is unsafe.

**Conclusion**

29. As desired by the Executive, we have sought advice from the Attorney on the issues and this is portrayed above. We think this looks like a sensible way to proceed, although there will have to be further consideration of the detail by Departmental legal advisers and Legislative Counsel. However, In the meantime we believe this is worthy of pursuing and accordingly seek the view of the Committee.

**Department of Justice**  
**October 2012**



**ANNEX A**

**LIST OF ALL PROPOSALS AND LEGISLATIVE ROUTE**

**Provisions to be added to the Sexual Offences Act by primary legislation through the Criminal Justice Bill**

- 1. Review mechanism for indefinite notification**
- 2. Removal of notification for abolished offences**
- 3. Notification for offenders convicted outside the UK**
- 4. Strengthening SOPO provisions**
- 5. Notification requirements: travel within the United Kingdom**

**Provisions to be made by affirmative secondary legislation**

**6. Notification requirements: travel outside the UK**

(by amendment to the Sexual Offences Act 2003 (Travel Notification Requirements) Regulations 2004

**7. Arrangements for offenders with no fixed abode**

(by new regulations under section 85(5)(a) of the Sexual Offences Act 2003)

**8. Offenders living in a household where there is a child under 18**

**9. Additional personal details**

(both by new regulations under section 83(5a) of the Sexual Offences Act 2003)

**Provisions to be made by primary legislation through the Faster, Fairer Justice Bill**

**10. Violent offender orders**

## **ANNEX B**

### **OPTIONS FOR ATTACHING NOTIFICATION TO OFFENDERS FROM OUTSIDE THE UK**

**1. Retain the existing notification order process which requires the police to apply to the court for an order.**

**For:** The current arrangements have not resulted in any major problems, largely due to the low numbers of ‘foreign’ offenders (whom the agencies are aware of) coming to NI. The procedures have worked well and no cases of offending has occurred by foreign offenders who should have been made subject to notification through a court order.

**Against:** Police time is used to prepare cases for court, and offenders during this time are not subject to notification requirements. This period could be used by offenders to carry out further offences, or to move elsewhere.

There is no responsibility on the offender to notify unless the court so orders whereas domestic offenders do have a statutory responsibility on conviction.

**2. All offenders who come to NI with convictions from outside the UK have to notify after seven days.**

**For:** This option would treat all offenders in a similar way. Offenders from overseas would have a statutory obligation to notify in the same way as domestic offenders. Foreign offenders (and this term includes NI residents convicted overseas) would have three days to make notification once they had been in the country for seven days. Those who were genuinely unaware of the requirement, until told by the police, would not face criminal prosecution.

**Against:** Offenders from states with dubious human rights records and inferior justice systems may be required to notify on the basis of unsafe convictions. This may invoke Article 6 issues.

**3. Introduce the statutory requirement to notify for convictions from ROI only.**

**For:** This would address the Attorney's concerns and would allow for similar cross border arrangements for offenders from either jurisdiction having to notify North or South – the nearest thing to an 'all-Ireland' register .

**Against:** It would not change the process for offenders coming to NI with convictions from elsewhere.

**4. Introduce statutory requirement to notify only for convictions from ECHR (EEA) states.**

**For:** This addresses the 'Iranian asylum seeker' issue in that only offenders from countries with ECHR credentials can be obliged to notify.

**Against:** The Executive require an amendment to the Bill to be brought forward which will allow for a single enhanced process for attaching notification to foreign offenders.

**5. Introduce the statutory requirement to notify and expand the reasonable excuse defence to specify that it is a reasonable excuse to any charge of failure to comply with the requirement to notify if the conviction has been secured through a violation of human rights and add a provision which states that a finding by the court that the defendant had a reasonable excuse for failing to notify by virtue of the original conviction being obtained through a violation of human rights, causes the person to cease to be subject to the notification requirements from then on in respect of that conviction.**

**For:** This option addresses the Attorney's concerns by removing any Article 8/6 issues. The provision now removes any ongoing requirement to notify.

**Against:** The offender will face criminal charges before the basis for his original conviction can be addressed.

**6. Introduce the statutory requirement to notify but include a right of appeal to the High Court for removal of requirement to notify on the basis of current grounds only – ie the same as must be proved before the court can make a notification order.**

**For:** This would allow the offender to make application to the court for removal on the same grounds as the court uses for granting a notification order. This maintains the status quo in terms of court decisions, but requires a person to

conform to notification before the court makes a decision rather than after. No criminal sanctions are faced.

**Against:** Does not address unsafe conviction point.

**7. Introduce the statutory requirement to notify and include a right of application to the High Court for removal of requirement to notify on the basis of current grounds (as above) and on grounds of an unsafe conviction.**

**For:** This allows notification from the outset whilst permitting court involvement on current grounds and on grounds of safety of the conviction which can lead to removal of requirement to notify.

**Against:** The process might still invoke Article 8 or 6 issues.

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**CRIMINAL JUSTICE BILL: SEX OFFENDERS**

CLAUSE/ SCHEDULE/ SUBJECT AREA	ORGANISATION	COMMENTS	DEPARTMENT'S RESPONSE
General comments	Northern Ireland Policing Board	<p>The Northern Ireland Policing Board's (NIPB) submission refers to sexual offences as very serious crimes which blight our community. The NIPB is of the view that tackling these crimes requires a multi-agency approach, which would arguably be enhanced if a statutory duty was placed upon public bodies, including the police, to have due regard to the likely effect on crime and anti-social behaviour when exercising their functions and to do all that they reasonably can to enhance community safety.</p> <p>The NIPB highlights that such a duty was originally included at clause 34 of the Justice Bill but was subsequently removed from the final version of the Bill because of concerns around the workings of the principle, specifically the wide scope of the clause and the corresponding potential for costly legal challenges.</p> <p>The NIPB has called for an amendment to the Criminal Justice Bill to include a 'clause 34' type duty on public bodies to come into force on a day the Department of Justice, by Order, appoints, with the order containing such</p>	<p>The management of risk from sexual offending is already a multi agency function under Articles 49 to 51 of the Criminal Justice (NI) Order 2008.</p>

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**CRIMINAL JUSTICE BILL: SEX OFFENDERS**

		<p>transitional, transitory or savings provisions as the Department thinks appropriate. The NIPB highlights that this would give the Department and the Committee for Justice time to consider the specific workings of the duty but would reduce delay in implementing the provision once the finer details were agreed.</p> <p>The NIPB is of the view that, given the concerns regarding the potential for costly legal challenge and the enforceability of such a duty, consideration could be given to introducing a complaints type mechanism for aggrieved individuals which would, at least in the first instance, avoid the need for that individual to seek a judicial remedy.</p> <p>The NIPB states in its submission that the PSNI was supportive of Violent Offender Orders (VOOs) which were included in the Department's consultation paper. It highlights that VOOs place restrictions on offenders who pose a risk of very serious violent harm. It states that the PSNI believes that VOOs could be a particularly useful tool in risk managing serial domestic abusers and those who move from partner to partner and commit violent crimes, and would allow the police 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. It notes that the Department has indicated that VOOs will be included in future legislation. However, the NIPB believes that</p>	<p>Draft legislation will be brought forward in the Faster Fairer Justice Bill. A policy paper will be presented to the Committee next month.</p>
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		<p>provision for VOOs should be included in this Bill on the basis that the relevant provisions will not come into force until such day as the Department may by order appoint.</p>	
	<p><b>Probation Board for Northern Ireland</b></p>	<p>The Probation Board for Northern Ireland highlights in its submission that the related Department of Justice consultation exercise included a proposal to amend Part 2 of the 2003 Act whereby an offender who is subject to notification requirement would have to notify the PSNI if they resided in a household where there is a child under 18. It states that the PBNI supported this proposal and questions why it does not appear in the draft Bill.</p> <p>The PBNI seeks clarification on the omission of a requirement on qualifying offenders to notify on a weekly basis, their whereabouts, if they had no fixed abode, which also featured in the previous consultation. The PBNI is of the view that while certain exceptions, for example for offenders residing in hostels or in hospital care, would be useful to this proposal, it would be a useful requirement.</p>	<p>These proposals will be introduced by way of secondary legislation.</p> <p>Provisions for this proposal will be made by new regulations under Section 83(5) of the Sexual Offences Act 2003.</p> <p>Provisions for this proposal will be made by way of new regulations under Section 85(5)(a) of the Sexual Offence Act 2003.</p>
<p><b>Clause 1 Schedule 1(2)(6)</b></p>	<p><b>Disability Action</b></p>	<p>Disability Action raises a number of issues in its submission in relation to Schedule 1. It highlights that Schedule 1 (6) states that 'an application under this paragraph must be in writing'. Disability Action comments that the United Nation Convention on the Rights of</p>	<p>It would be difficult in practical terms to apply in other ways. However, the legislation does not require the written application to be made by</p>

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		<p>Persons with Disabilities (UNCRRPD), of which the UK is a signatory, notes in Article 21(b) that states agree to:</p> <p>'Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions,' and under Article 4 1(a):</p> <p>'To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention'.</p> <p>Disability Action also highlights that the form of communication by the State parties is not prescribed in the proposed Bill, for example in paragraph 7 the 'Chief Constable must, within 14 days of the receipt of any application, under this paragraph, give an acknowledgement of the receipt of the application to the offender'.</p> <p>Disability Action suggests that a different form of words to reflect the comments of the UNCRRPD while maintaining the needs for records to be maintained such as 'an application under this paragraph must include ...' would provide the details required without being prescriptive about the communication method used.</p>	<p>the applicant — where disability prevented an applicant making a written application, we would envisage a third party being involved. This can be dealt with in the guidance.</p>
<p><b>Schedule 1(2)(7)</b></p>	<p>Disability Action also refers to Schedule 1</p>	<p>This is a</p>	



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	<b>(3)(2)(iii)</b>	<p>(paragraph 2A iii) 'in respect of which the offender was found to be under a disability and to have done the act charged'. Disability Action is unclear why the undefined term disability has been specifically included as a ground for the Chief Constable to consider. Disability Action believes that unless disability on the part of the offender was part of the original offence, then matters in relation to capacity at the time of the offence can be adequately dealt with under paragraph 2(L) in the Bill.</p> <p>Disability Action states that to include disability as a specific mitigation measure without further definition links disability with offending and unless there are specific reasons for its inclusion, Disability Action recommends that paragraph 2(iii) is removed.</p>	<p>misunderstanding of the provision. The Chief Constable must take account of the seriousness of the offence which the person was convicted of, or, if not convicted, was found to be under a disability and have done the act charged, and which led to notification. This is because notification is attached by the SOA 2003 whether the person was convicted, found to be insane, or found to be under a disability and to have done the act charged.</p>
<b>Evangelical Alliance</b>		<p>Evangelical Alliance welcomes the implementation of a review mechanism and views it as being reflective of the fact that an individual can change and that no one is beyond redemption. However, in order to protect the vulnerable, it suggests the retention of powers to initially place dangerous individuals on the register for life subject to the review mechanism after a defined period. In every case Evangelical Alliance suggests a thorough review by the relevant psychiatric expert before someone is removed from the register meaning that individuals are not</p>	<p>There is no change to the existing requirement to notify for an indefinite period if sentenced to longer than 30 months imprisonment.</p> <p>Discharge will be on the basis of a multi agency assessment of risk, including, where appropriate, mental</p>

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	<p>simply removed from the register after an arbitrary period even when they still present an identifiable threat to others.</p>	<p>health input.</p>
<p><b>National Society for the Prevention of Cruelty to Children</b></p>	<p>The National Society for the Prevention of Cruelty to Children (NSPCC) states in its submission that, based on its own practice experience of sex offenders, it knows that some, despite all attempts at rehabilitation, will remain a significant risk for the duration of their lives. The NSPCC believes that where a paedophile has sexually abused a child, registration should be for life.</p> <p>The NSPCC highlights that, in respect of the review of indefinite offender notification requirements, an important safeguard would be to update the PPANI Manual of Practice to allow for a qualifying offender to be brought into assessment and risk management arrangements if there are future concerns.</p> <p>The NSPCC refers to the time periods attached to the initial review of lifetime notification applications for offenders under 18, and those who are 18 and over, and expresses its support for special measures for young people. It highlights that, while young people will have committed a very serious offence in the first instance to acquire this level of notification requirement, it supports</p>	<p>The requirement to notify for an indefinite period continues. Discharge from that requirement will only result if risk assessment shows no need to continue to notify.</p> <p>The PPANI guidance to agencies and manual practice already stipulate that a sex offender who is not subject to notification can be assessed under the PPANI arrangements at any time an agency has concerns over his risk.</p> <p>This comment concurs with the proposals.</p>

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<p><b>Schedule 1 (3)(2)(a) to (n)</b></p>		<p>difference of treatment for this age group. It also highlights that research has shown that treatment provision can be successful with young people and most young people who demonstrate harmful sexual behaviour do not go on to become adult sex offenders. The NSPCC also refers to the factors for the Chief Constable to consider when arriving at a determination to deregister an individual. The NSPCC suggests some further factors for inclusion in the legislation or guidance:</p> <ul style="list-style-type: none"> <li>• The need for the welfare and protection of the victim(s) to be paramount;</li> <li>• In cases involving sex offenders who have abused children, child protection and safeguarding must be a prime consideration and the Chief Constable's assessment of a sex offenders application to be removed from notification arrangements should include views and evidence from children's social care professionals and any views from victims as appropriate;</li> <li>• Risk assessments must be informed by empirical, objective evidence, and any decision taken based on transparent and clear criteria. Decisions taken must be well documented;</li> <li>• A lack of reported incidents or concerns does not automatically equate to a lack of risk. Risk assessments for the purposes of considering deregistration should not be based on absence of</li> </ul>	<p>Both of these issues will be included in the risk assessment process prior to the determination of an application (listed at para 3(2)(k) and this will also be clarified in guidance.</p> <p>This will also be provided for in guidance.</p> <p>Discharge will not take place if an offender continues to pose a risk of harm which justifies</p>
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<p><b>Schedule 1 (7)(1)</b></p>	<p>evidence that a risk exists but rather on positive evidence that the risk once posed by the offender has been substantially reduced, and that the offender poses no current or future risk to the public.</p> <p>The NSPCC states that it is helpful that the Schedule provides for statutory guidance to be produced on the issue and process. However, it would like to see the welfare and protection of children being paramount including the development of guidance for dealing with situations where an agency or agencies have a contrary view to the police that an individual does continue to pose a risk.</p> <p>The NSPCC notes that under the Sexual Offences Act 2003, children who have committed a sexual offence are subject to the same notification requirements as adults. Although the length of their notification period is automatically halved, and they have the possibility of varying a notification direction, this does not go far enough in recognising and attempting to meet the rights, needs and vulnerabilities which are specific to children. It believes that no consideration is given to how such requirements may affect the lives of young people, how regular contact with criminal justice agencies may lead to them being stigmatised at a young age, or to how the notification requirements could be tailored</p>	<p>notification. The police will make a determination on the basis of an assessment of the evidence required at para 3(2).</p> <p>This aspect needs some further clarification but the NSPCC and other stakeholders will be consulted in relation to the development of guidance.</p> <p>This comment pertains to a more fundamental issue in relation to the operation of the legislation as a whole. It cannot be addressed in the context of the changes proposed in the CJ Bill.</p>
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		<p>to better fit in with the reality of children's everyday lives, for example in relation to their attendance at school and their widespread use of social networking sites. Given this, the NSPCC believes that the current requirements do not constitute a child centred and welfare-based approach to their management.</p> <p>On a wider issue the NSPCC suggests that consideration is given to whether a review should be conducted into the effectiveness, proportionality and impact of the current and proposed notification requirements on young people who have sexually offended.</p>	<p>See comment above.</p>
<p><b>Northern Ireland Human Rights Commission (NIHRC)</b></p>		<p>The Northern Ireland Human Rights Commission (NIHRC) notes that the Bill will reform the framework for the notification requirements for sex offenders and highlights that its main issue for consideration in respect of the framework is whether the proposed amendments will ensure the degree of interference with an individual's right to private life will be proportionate.</p> <p>The NIHRC believes that the assessment of whether the measure is proportionate and necessary in a democratic society is complex, however it is the principal issue for consideration with respect to sex offender notification arrangements.</p> <p>The NIHRC highlights that, in assessing the</p>	<p>These comments concur with the proposal in the Bill.</p>

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	<p>issue of proportionality, it must be ensured that the reforms are grounded on a solid evidential basis which demonstrates that the measures will achieve the legitimate aims which they pursue without arbitrarily impacting on individuals' human rights.</p> <p>The NIHRC states in its submission that it has reviewed the provisions of the Bill relating to the notification requirements placed on sex offenders. It notes that this is laid down in law and pursues the legitimate aim of protecting the public. Its view is that the introduction of a procedure which will allow those under notification requirements to apply to the Chief Constable, and if they are unsuccessful to the Crown Court, to have their notification requirements discharged on the grounds that they are no longer a danger to the public, appears to ensure that the interference with the individual's right to private life is proportionate.</p> <p>The NIHRC highlights that in considering the proportionality of this measure it is important to note the risk posed to the public. It also highlights that the risk of harm to the public posed by sex offenders is significant and protective measures are required. It refers to the obligations international human rights law places on states to protect citizens from harm and notes that there are specific obligations in respect of vulnerable groups. It points out in its</p>	
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		<p>submission that the UN Committee on the Elimination of Discrimination Against Women has made specific reference to states' obligation to protect women against sexual violence:  <i>'States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention'</i></p> <p>It also points out that the UNCRC at Article 34 places a specific duty on the State to protect children from all forms of sexual abuse and exploitation.</p> <p>The NIHRC believes that the need to protect the public must be balanced against the rights of the offender and refers to the current rules, under which an offender sentenced to more than 30 months imprisonment for a relevant offence will be included on the register indefinitely runs contrary to Article 10 of the ICCPR, which states that the treatment of offenders should at least contemplate the possibility of rehabilitation. It also refers to the Supreme Court ruling in the case of R and Thompson 2010 that the notification</p>	
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		<p>requirements represent a disproportionate interference with the offender's right to private life. The NIHRC'S view is that the amendments contained within this Bill at clause 1 and Schedule 1 appear to address these two issues.</p> <p>In its submission the NIHRC seeks further information on how the periods of time which must elapse before a review is permitted have been determined and what evidential basis informed this decision. It notes that the provisions with regard to the application process appear to comply with the applicants' right to a fair trial as protected by Article 14 of the ICCPR and Article 6 of the ECHR.</p>	<p>DOJ feels that 15 years from the date of leaving prison is a fair and appropriate period to expect an offender to be in the community, and will allow for more accuracy in the risk assessment process. Also, fixed periods of notification extend to 10 years without review, so a review for indefinite periods cannot take place until an appropriate period has elapsed after the 10 year mark. The further review period has been proposed at 8 years as a more appropriate time frame for second review and to allow for parity with other UK jurisdictions. The period for under 18s conforms to the policy in</p>
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		<p>It also seeks information on what assistance will be available to an individual when preparing their application and what forms of evidence the Chief Constable or Crown Court would require.</p>	<p>he SOA 2003 which attaches notification requirements at a 50% reduced rate for under 18s. The Bill does not provide or the police to extend he further review period. All cases will be risk assessed individually before any determinations made to discharge notification.</p> <p>The preparation of an application is the responsibility of the offender.</p> <p>The Bill states that the offender may give such information as he wishes to be taken into account and the Chief Constable must take that into account. The Crown Court makes a determination on the same basis as the Chief</p>
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			Constable.
	<b>Northern Ireland Policing Board</b>	The Northern Ireland Policing Board (NIPB) highlights in its submission that Schedule 1 contains a new 'Schedule 3A' which is to be inserted into the Sexual Offences Act 2003. It highlights that, if implemented, Schedule 3A will provide a mechanism for the review of indefinite notification requirements for sexual offences and that this will have implications for policing, not least because it specifies that it is the Chief Constable to whom an application for a review must be made.	We have estimated that the police will have to make determinations on an average of 20 applications per year.
<b>CLAUSE 3</b>	<b>National Society for the Prevention of Cruelty to Children</b>	The NSPCC highlights the introduction of the new provision requiring qualifying offenders to notify the police on entrance to Northern Ireland. It believes that this a very important provision. It refers to the current onus on the police to find and require an offender to register and apply for a notification order. It believes that this places additional unnecessary responsibility on the police and is problematic where an individual enters the jurisdiction unknown to the authorities. It highlights the position in the Republic of Ireland where the Sex Offenders Act 2001 requires that the individual registers with the	

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		<p>authorities on entry to the country and supports what it believes to be a very sensible provision. It also suggests that it is something which other jurisdictions in Great Britain may wish to consider and seeks clarification on the extent of any qualifying offence outside of the jurisdiction.</p>	<p>All sexual offences under the law in another State which would have constituted an offence under Schedule 3 to the Sexual Offences Act 2003.</p>
<p><b>Northern Ireland Policing Board</b></p>		<p>The Northern Ireland Policing Board highlights that clause 3 of the Criminal Justice Bill amends the Sexual Offences Act 2003 to ensure that relevant sexual offenders coming to Northern Ireland with convictions/cautions from European Economic Area (EEA) countries outside of the United Kingdom are subject to sex offender notification requirements and that such persons must notify the police within 3 days once he or she has stayed for a qualifying period. The NIPB notes that the police will no longer be required to apply to court for a notification order in respect of such persons and this ought to, in theory, deliver a cost saving and reduce bureaucracy. However, it questions how a failure to notify the police within 3 days will be identified and enforced and how relevant persons from EEA countries will be made aware of their obligation to notify the police. It also questions whether there are any language/literacy/communication considerations in this regard.</p>	<p>Other police services may share information with PSNI if they know an offender is travelling to NI. However, there can be no guaranteed way to ensure that the police will be alerted when a sex</p>

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			<p>offender comes here.</p> <p>The PSNI are working with the Garda to ensure that offenders from Ireland will be informed of their obligations if they come to NI. Offenders from other jurisdictions won't always know of the obligations in advance of coming to NI but if the police become aware they can immediately be informed and have to notify straight away, or risk arrest and prosecution.</p> <p>Issues regarding language/literacy/communication will be addressed in guidance.</p> <p>This is a drafting error which will be addressed in the next draft of the Bill</p>
	<p><b>Public Prosecution Service</b></p>	<p>The Public Prosecution Service raises a drafting issue in its submission. It notes that clause 3 inserts a new section 96A into Part 2 of the Sexual Offences Act 2003 relating to "Offences committed in an EEA State other than the United Kingdom". However it has indicated that a section 96A already exists in the Sexual Offences Act 2003, although it applies only to Scotland, referring to "powers of entry and examination of home address",</p>	

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		which was inserted by the Police, Public Order and Criminal Justice (Scotland) Act 2006.	
<b>CLAUSE 4</b>	<b>National Society for the Prevention of Cruelty to Children</b>	The NSPCC states in its submission that the provision of Sex Offence Prevention Orders has become an important tool for agencies involved in Public Protection but highlights that they are framed in such a way in the 2003 Act that they restrict what an individual can't do. The NSPCC welcomes a move to issue positive requirements and believes that this should work well, for example, in relation to accommodation requirements and where an offender is required to live or to compel an offender to undergo an anger management course.	These comments concur with the proposals in the Bill.
	<b>Northern Ireland Policing Board</b>	The Northern Ireland Policing Board (NIPB) notes that clause 4 of the Bill amends the Sexual Offences Act 2003 so that a person subject to a Sexual Offences Prevention Order (SOPO) can be required to undertake a particular action and a person will commit an offence if, without reasonable excuse, they fail to do anything which is required by the SOPO. The NIPB highlights that any such positive obligations imposed must be lawful, proportionate and necessary, something which the police must bear in mind if suggesting conditions on application to the court for a SOPO in respect of a sex offender.	The court makes decisions on what is lawful, proportionate and necessary in accordance with the existing legislation.

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# Appendix E

## Recordable Offences

**(Source: Association of Chief Police Officers)**

- Genocide
- Murder
- Murder (victim one year old or over)
- Murder (victim under one year old)
- Soliciting to murder
- Manslaughter
- Manslaughter (by virtue of diminished responsibility or by survivor of suicide pact)
- Administering poison to endanger life
- Administering poison so as to endanger life
- Causing poison to be taken so as to endanger life
- Administering noxious thing so as to endanger life
- Causing noxious thing to be taken so as to endanger life
- Causing poison to be administered so as to endanger life
- Causing noxious thing to be administered so as to endanger life
- Administering poison noxious thing etc. so as to endanger life or inflict grievous bodily harm
- Kidnapping
- Attempt kidnapping
- Detaining and threatening to kill a hostage
- Detaining and threatening to injure a hostage
- Detaining and threatening to continue to detain a hostage
- Hijacking
- Seizing or exercising control of ship by use of force or threats
- Seizing or exercising control of sea platform by use of force or threats
- Seizing a channel tunnel train
- Unlawfully exercise control over channel tunnel train
- Seizing tunnel system
- Unlawfully exercise control over tunnel system
- Piracy
- Endangering persons on railway by neglect
- Endangering railway passengers by unlawful act
- Endanger safety of person conveyed or being in or upon the railway
- Caused to be endangered the safety of a person conveyed in or upon the railway
- Endangering persons on train by throwing missiles
- Interfering with railway w/i to endanger passengers
- Put or throw stone wood or thing on railway with intent to endanger safety
- Take remove or displace rail sleeper or thing w/i to endanger safety
- Turn move or divert points or machinery with intent to endanger safety
- Make or show light or signal on railway with intent to endanger safety
- Hide or remove light or signal on railway with intent to endanger safety
- Do an unlawful act with intent to endanger safety
- Caused an unlawful act to be done with intent to endanger safety
- Committing act of violence on board channel tunnel train likely to endanger safety
- Committing act of violence within tunnel system likely to endanger

safety

- Place on channel train device/ substance to destroy train or damage goods so as to endanger safety
- Cause to be placed on channel tunnel train device/substance to destroy/ damage goods or endanger safety
- Place in tunnel system device/ substance to destroy train or damage goods so as to endanger safety
- Cause to be placed in tunnel system device/substance likely to destroy train, damage goods or endanger safety
- Interfere with operation of property so as to be likely to endanger safety
- Knowingly communicate false information thereby endangering safety
- Threaten to damage/destroy a channel tunnel train/system making such threat likely to endanger safety
- Threaten to damage/destroy property to endanger channel tunnel train/ system likely to endanger safety
- Misconduct on the railway - endanger person
- Counsel/aid/assist misconduct on the railway - endanger person
- Expose child under 2 whereby life is endangered.
- Offence committed outside UK in relation to or by means of nuclear material
- Receiving, holding or dealing with nuclear material intending to commit an offence (specify)
- Threatening to use nuclear material to commit an offence (specify)
- Threatening to obtain nuclear material in order to compel a state etc. to do or abstain from doing any act
- Torture
- Possession of firearm w/i to endanger life
- Possessing firearm with intent
- Possessing imitation firearm with

intent

- Possessing shotgun with intent
- Possessing air weapon with intent
- Possessing ammunition with intent
- Using firearm w/i to resist arrest
- Using firearm to resist arrest
- Using imitation firearm to resist arrest
- Using shotgun to resist arrest
- Using air weapon to resist arrest
- Possessing firearm while committing a schedule 1 offence
- Possessing firearm when committing offence
- Possessing imitation firearm when committing offence
- Possessing shotgun when committing offence
- Possessing air weapon when committing offence
- Possessing firearm on arrest for offence
- Possessing imitation firearm on arrest for offence
- Possessing shotgun on arrest for offence
- Possessing air weapon on arrest for offence
- Carrying firearm w/i to commit indictable offence
- Having firearm with intent to commit Indictable offence
- Having shotgun with intent to commit indictable offence
- Having air weapon with intent to commit indictable offence
- Having firearm w/i to resist arrest
- Having firearm with intent to resist arrest
- Having firearm with intent to prevent arrest of another
- Having shotgun with intent to resist arrest
- Having air weapon with intent to resist arrest



- Having shotgun with intent to prevent arrest of another (weapon for discharge of noxious liquid gas etc.)
- Having air weapon with intent to prevent arrest of another
- Having imitation firearm w/i to commit indictable offence
- Carrying imitation firearm w/i to resist arrest
- Having imitation firearm with intent to resist arrest
- Having imitation firearm with intent to prevent arrest of another
- Supplying firearms to prohibited persons
- Supplying firearm to prohibited person
- Supplying shotgun to prohibited person
- Supplying air weapon to prohibited person
- Possess firearm with intent to cause fear of violence
- Possess imitation firearm with intent to cause fear of violence
- Possess shotgun with intent to cause fear of violence
- Possess airgun with intent to cause fear of violence
- Possessing prohibited weapons
- Possessing prohibited weapon (automatic)
- Possessing a prohibited weapon (self loading rifle)
- Possessing prohibited weapon (pump action rifle)
- Possessing prohibited weapon (self-loading smooth-bore gun)
- Possessing prohibited weapon (pump-action smooth-bore gun)
- Possessing prohibited weapon (smooth-bore revolver)
- Possessing prohibited weapon (rocket launcher)
- Possessing prohibited weapon (mortar)
- Possessing prohibited weapon
- Possessing prohibited weapon (disguised firearm).
- Possessing prohibited weapon (rocket not covered by s. 5(1)(c) of the act).
- Possessing prohibited weapon (launcher).
- Possessing prohibited weapon (projecting apparatus).
- Possess prohibited weapon (disguised firearm)
- Possessing prohibited ammunition
- Possessing prohibited weapon (ammunition not covered by s. 5(1)(c) of the act)
- Possessing prohibited ammunition (incendiary).
- Possessing prohibited ammunition (armour piercing).
- Possessing prohibited ammunition (expanding, pistol).
- Possessing prohibited ammunition (missile).
- Distributing prohibited weapons
- Manufacturing prohibited weapon (automatic)
- Selling or transferring prohibited weapon (automatic)
- Manufacturing prohibited weapon (self-loading-rifle)
- Selling or transferring prohibited weapon (self-loading-rifle)
- Manufacturing prohibited weapon (pump-action rifle)
- Selling or transferring prohibited weapon (pump-action rifle)
- Manufacturing prohibited weapon (self-loading smooth-bore gun)
- Selling or transferring prohibited weapon (self-loading smooth-bore gun)
- Manufacturing prohibited weapon (pump-action smooth-bore gun)
- Selling or transferring prohibited weapon (pump-action smooth-bore

- | gun)   | weapon   |
|--|--|
| ■ Manufacturing prohibited weapon (smooth-bore revolver)                                       | ■ Purchasing or acquiring a prohibited weapon (automatic)                                      |
| ■ Selling or transferring prohibited weapon (smooth-bore revolver)                             | ■ Purchasing or acquiring prohibited weapon (self loading rifle)                               |
| ■ Manufacturing prohibited weapon (rocket launcher)  | ■ Purchasing or acquiring prohibited weapon (pump action rifle)                                |
| ■ Selling or transferring prohibited weapon (rocket launcher)                                  | ■ Purchasing or acquiring prohibited weapon (self loading smooth bore gun)                     |
| ■ Manufacturing prohibited weapon (mortar)   | ■ Purchasing or acquiring prohibited weapon (pump action smooth bore gun)                      |
| ■ Selling or transferring prohibited weapon (mortar)   | ■ Purchasing or acquiring prohibited weapon (smooth bore revolver)                             |
| ■ Manufacturing prohibited weapon (weapon for discharge of noxious liquid, gas etc.)           | ■ Purchasing or acquiring prohibited weapon (rocket launcher)                                  |
| ■ Selling or transferring prohibited weapon (weapon for discharge of noxious liquid, gas etc.) | ■ Purchasing or acquiring prohibited weapon (mortar)   |
| ■ Selling or transferring prohibited weapon (disguised firearm).                               | ■ Purchasing or acquiring prohibited weapon (weapon for discharge of noxious liquid gas etc.)  |
| ■ Selling or transferring prohibited weapon (rocket not covered by s. 5(1)(c) of the act).     | ■ Purchasing or acquiring prohibited weapon (disguised firearm).                               |
| ■ Selling or transferring prohibited weapon (launcher).  | ■ Purchasing or acquiring prohibited weapon (rocket not covered by s. 5(1)(c) of the act).     |
| ■ Selling or transferring prohibited weapon (projecting apparatus).                            | ■ Purchasing or acquiring prohibited weapon (launcher).  |
| ■ Sell/transfer prohibited weapon (disguised firearm)  | ■ Purchasing or acquiring prohibited weapon (projecting apparatus).                            |
| ■ Distributing prohibited ammunition   | ■ Purchase/acquire prohibited weapon (disguised firearm)                                       |
| ■ Manufacturing prohibited ammunition  | ■ Purchasing or acquiring prohibited ammunition  |
| ■ Selling or transferring prohibited ammunition  | ■ Purchasing or acquiring prohibited weapon (ammunition not covered by s. 5(1)(c) of the act). |
| ■ Selling or transferring prohibited weapon (ammunition not covered s. 5(1)(c) of the act).    | ■ Purchasing or acquiring prohibited ammunition (incendiary).                                  |
| ■ Selling or transferring prohibited ammunition (incendiary).                                  | ■ Purchasing or acquiring prohibited ammunition (armour-piercing).                             |
| ■ Selling or transferring prohibited ammunition (armour-piercing).                             | ■ Purchasing or acquiring prohibited ammunition (expanding, pistol).                           |
| ■ Selling or transferring prohibited ammunition (expanding, pistol).                           | ■ Purchasing or acquiring prohibited ammunition (missile).                                     |
| ■ Selling or transferring prohibited ammunition (missile).                                     |  |
| ■ Purchasing or acquiring a prohibited   |  |

- Causing explosion likely to endanger life
- Causing explosion likely to endanger property
- Doing any act w/i to cause explosion likely to endanger life
- Doing any act w/i to cause explosion likely to endanger property
- Making explosives w/i to endanger life
- Making explosives w/i to endanger property
- Possessing explosives w/l to endanger life
- Possessing explosives w/i to endanger property
- Making explosives for unlawful purposes
- Possessing explosives for unlawful purposes
- Being an accessory to explosive offences
- Causing grievous bodily harm by explosion
- Using explosives w/i to cause grievous bodily harm
- Causing explosion with intent
- Sending explosive substance with intent
- Delivering explosive substance with intent
- Causing explosive substance to be received with intent
- Placing explosive substance with intent
- Throwing explosive substance with intent
- Placing explosives near building w/i to do bodily injury
- Making explosives w/i to commit offence
- Possessing explosives w/i to commit offence
- Conspiracy to cause explosion likely to endanger life
- Conspiracy to cause explosion likely to endanger property
- Manufacture an explosive at unauthorised place.
- Unlawfully and maliciously by explosion destroy or damage any dwelling house or building and endanger life
- Unlawfully or maliciously place any explosive in or near building with intent to destroy/damage any contents
- Causing explosion likely to endanger life or property
- Conspiracy to cause explosion likely to endanger life or property
- Doing an act with intent to cause explosion likely to endanger life or property
- Having or making substance with intent to endanger life or property
- Having or making substance with intent to endanger life or property
- Making explosive substance with intent to endanger life
- Have in your possession/under your control an explosive substance with intent to endanger life
- Making explosive substance with intent to endanger property
- Have in your possession/under your control an explosive substance with intent to endanger property
- Use an anti-personnel mine
- Develop/produce an anti-personnel mine
- Cause explosion likely to endanger life or property
- Do act with intent to cause explosion likely to endanger life or property
- Conspire to cause explosion likely to endanger life or property
- Possess/control an explosive substance with intent to endanger life or property
- Make an explosive substance with intent to endanger life or property

- Have/use/develop/produce/participate in transfer of or involvement in preparations to use chemical weapon
- Alter, construct, install or permit premises or equipment for producing chemical weapons
- Use a chemical weapon
- Develop/produce a chemical weapon
- Possess a chemical weapon
- Participate in transfer of a chemical weapon
- Engage in military preparations or preparations of military nature intending use of chemical weapon
- Construct premises intending they be used to produce chemical weapons
- Alter premises intending they be used for producing chemical weapons
- Install/construct equipment intending it to be used in the production of chemical weapons
- Alter equipment intending it to be used in production of chemical weapons
- Permit construction of premises intending them to be used in production of chemical weapons
- Permit premises to be altered intending they be used for the production of chemical weapons
- Permit installation of equipment intending it be used in the production of chemical weapons
- Permit equipment to be altered intending it be used in the production of chemical weapons
- Conspiracy - outside the UK - firearms
- Conspiracy to commit triable either way offence outside the UK – firearms/shotguns/ offensive weapons
- Send false/misleading message likely to prejudice safety of life or life services
- Attempt to send false/misleading message
- Attempt to send false/misleading message likely to prejudice safety of life or life services
- Taking indecent photographs or pseudo-photographs of children
- Distributing indecent photographs or pseudo-photographs of children
- Possessing indecent photographs or pseudo-photographs of children with a view to distributing or showing
- Permitting the taking of indecent photographs or pseudo-photographs of children
- Showing indecent photographs or pseudo-photographs of children
- Advertising indecent photograph or pseudo-photograph of child
- Causing indecent photograph or pseudo-photograph of child to be advertised
- Possessing an indecent photograph or pseudo-photograph of a child
- Making indecent photograph or pseudo-photograph of children
- Rape
- Rape - female under 16 years
- Rape - female over 16 years
- Rape - male under 16 years
- Rape - male over 16 years
- Incitement to commit the offence of rape outside the United Kingdom
- Conspiracy to commit the offence of rape outside the United Kingdom
- Rape of female
- Rape of female under 16
- Rape of female aged 16 years or over
- Rape of male
- Rape of male under 16
- Rape of male aged 16 years or over
- Rape of child under 13 by a male
- Rape of female child under 13 by a male
- Rape of male child under 13 by a male

- Buggery
- Buggery (with woman)
- Buggery (with boy under 16)
- Buggery (with male 16 or over without consent)
- Buggery (with male 21 or over without consent)
- Buggery (by male 21 or over with male of between 16 and 20 inclusive with consent)
- Buggery (by male of between 16 and 20 inclusive with male of 16 or over)
- Buggery with female under 16 years
- Buggery by person 21 years or over with female 16 or 17 years
- Buggery by person 18 to 20 years with female 16 or 17 years
- Buggery by person 16 or 17 years with female 16 or 17 years
- Buggery by person 16 or 17 years with female 18 years or over
- Buggery by person under 16 years with female 18 years or over
- Buggery by person with female other than under 16 years or 18 years and over
- Buggery with man other than in private
- Buggery by person between 18 and 20 with man 16 or 17
- Buggery by person under 18 with man over 18
- Buggery by person under 18 with man under 16
- Buggery by person under 18 with man under 18
- Buggery by person over 21 with man under 18
- Buggery of male under 16 by person over 21
- Buggery of female under 16 by person over 21
- Buggery of male under 16 by person also under 16
- Buggery of female under 16 by person also under 16
- Buggery by person aged 16 to 20 with male under 16 years old
- Buggery by person aged 16 to 20 with female under 16 years old
- Buggery otherwise in private with male
- Buggery otherwise than in private with a female
- Buggery by a person aged 16 - 17 with a man under 16
- Buggery by person aged 16 -17 with woman under 16
- Buggery or attempted buggery by a male aged under 16 with female aged 16 or over
- Buggery by person 16 or over with male person under 16
- Buggery by person 16 or over with female person under 16
- Assault w/i to commit buggery
- Gross indecency with child
- Gross indecency with child (boy)
- Gross indecency with child (girl)
- Buggery with mental patient by hospital staff
- Buggery with mental patient by guardian
- Gross indecency with mental patient by hospital staff
- Gross indecency with mental patient by guardian
- Inciting child to commit act of gross indecency (boy)
- Inciting child to commit act of gross indecency (girl)
- Intercourse with girl under 13
- Intercourse with girl under 16
- Intercourse with woman defective
- Intercourse with mental patient by hospital staff
- Intercourse with mental patient by guardian
- Owner/occupier permitting use

- of premises for unlawful sexual intercourse with girl under 13
- Owner/occupier permitting use of premises for unlawful sexual intercourse with girl 13 to 15
- Incitement to have intercourse with a girl under the age of thirteen outside the United Kingdom
- Incitement to have intercourse with a girl under the age of sixteen outside the United Kingdom
- Conspiracy to have intercourse with a girl under the age of thirteen outside the United Kingdom
- Conspiracy to have intercourse with a girl under the age of sixteen outside the United Kingdom
- Had sexual intercourse with person under age of 18 at a time when you were in a position of trust
- Incest
- Incest (by male) s. 10(1)
- Incest (by male with girl under 13) s. 10(1)
- Incest (by female) s. 11(1)
- Inciting girl under 16 to commit incest
- Sexual activity with child family member
- Sexual activity with female child family member under 13 – offender under 18 – no penetration
- Sexual activity with male child family member under 13 - offender under 18 – no penetration
- Sex act with female child family member under 13 - offender 18+ - penetration anus/vagina/mouth by penis/body part
- Sex act male child family member Under 13 offender 18+ - penetration of anus/vaginal/mouth by penis/body part
- Sexual activity with female child family member 13 to 17 - offender under 18 – no penetration
- Sexual activity with male child family member 13 to 17 - offender under 18 – no penetration
- Sex act female child family member 13 - 17 - offender 18+ penetration anus/vagina/mouth by penis/body part
- Sex act male child family member 13 - 17 - offender 18+ - penetration anus/vagina/mouth by penis/body part
- Incite child family member engage in sexual activity - no penetration
- Incite female child family member under 13 engage in sexual activity - offender under 18 - no penetration
- Incite male child family member under 13 to engage in sexual activity - offender under 18 - no penetration
- Incite female family member Under 13 engage sex act - offender 18+ - penetrate anus/vagina/mouth by penis/ body part
- Incite male family member Under 13 - engage sex act-offender 18+ -penetrate anus/vagina/mouth by penis/body part
- Incite female child family member 13 - 17 to engage sexual activity offender under 18 - no penetration
- Incite male child family member 13 - 17 to engage in sexual activity offender under 18 - no penetration
- Incite female family member 13 - 17 engage sex act offender 18+ penetrate anus/vagina/mouth by penis/body part
- Incite male family member 13 - 17 engage sex act offender 18+ - penetrate anus/vagina/mouth by penis/body part
- Penetrative sex by person over 16 on adult relative over 18
- Penetrative sex on a consenting person over 16 by an adult relative over 18
- Sexual activity with child family member under 13 - offender 18 or over- no penetration
- Sexual activity with female child family member under 13 - offender 18 or over- no penetration

- Sexual activity with male child family member under 13 - offender 18 or over 4 no penetration
- Sexual activity with child family member 13 to 17 offender 18 or over no penetration
- Sexual activity with female child family member 13 to 17 offender 18 or over no penetration
- Sexual activity with male child family member 13 to 17 offender 1801 over no penetration
- Incite child family member under 13 offender 18 or over to engage in sexual activity no penetration
- Incite female child family member under 13 offender 18 or over to engage in sexual activity no penetration
- Incite male child family member under 13 offender 18 or over to engage in sexual activity no penetration
- Incite child family member aged 13 to 17 offender 18 or over to engage sexual act no penetration
- Incite female child family member aged 13 to 17 offender 18 or over to engage sexual act no penetration
- Incite male child family member aged 13 to 17 offender 18 or over to engage in sexual activity no penetration
- Sex act with child family member under 13 offender under 18 penetrate anus/vagina/mouth by penis/body part
- Sex act with female child family member under 13 offender under 18 penetrate anus/vagina/mouth by penis/body part
- Sex act with male child family member under 13 offender under 18 penetrate anus/vagina mouth by penis/body part
- Sex act with child family member 13 to 17 offender under 18 penetrate anus/vagina/mouth by penis/body part
- Sex act with female child family member 13 to 17 offender under 18 penetrate anus/vagina/mouth by penis/body part
- member 13 to 17 offender under 18 penetrate anus/vagina/mouth by penis/body part
- Sex act with male child family member 13 to 17 offender under 18 penetrate anus/vagina/mouth by penis/body part
- Incite child family member Under 13 engage sex act offender under 18 penetrate anus/vagina/mouth by penis/ body part
- Incite female child family member Under 13 engage sex act off under 18 penetrate anus/vagina/mouth by penis/ body part
- Incite male child family member Under 13 engage sex act off under 18 penetrate anus/vagina/mouth by penis/ body part
- Incite child family member 13-17 engage sex act off under 18 penetrate anus/vagina/mouth by penis/body part
- Incite female child family member 13-17 engage sex act off under 18 penetrate anus/vagina/mouth by penis/body part
- Incite male child family member 13-17 engage sex act off under 18 penetrate anus/vagina/mouth by penis/body part
- Arrange/facilitate the commission of a child sex offence
- Meet child under 16 following sexual grooming-offender 18 or over
- Meet female child under 16 following sexual grooming-offender 18 or over
- Meet male child under 16 following sexual grooming-offender 18 or over
- Administer substance with intent to stupefy/overpower person to allow sexual activity involving that person
- Abducting woman defective w/i to have intercourse
- Abducting unmarried girl under 18
- Abducting unmarried girl under 16
- Abducting woman by force
- Sexual assault by penetration

- Sexual assault on female by penetration
- Sexual assault on a male by penetration
- Engage in sexual activity without consent - penetration
- Cause female to engage in sexual activity without consent - penetration
- Cause male to engage in sexual activity without consent - penetration
- Assault child under 13 - penetration with part of body/object
- Assault female child under 13 - penetration of vagina/anus with part of body/object
- Assault male child under 13 - penetration of anus with part of body/object
- Sexual assault of child under 13
- Sexual assault of female child under 13
- Sexual assault of male child under 13
- Cause/incite a child under 13 to engage in sexual activity - no penetration
- Cause/incite a female child under 13 to engage in sexual activity - no penetration
- Cause/incite a male child under 13 to engage in sexual activity - no penetration
- Cause/incite child under 13 engage in sexual activity - penetration anus/vagina/mouth by penis/body part
- Cause/incite female child under 13 engage in sexual activity - penetration anus/vagina/mouth by penis/body part
- Cause/incite male child under 13 engage in sexual activity - penetration of anus/vagina/mouth by penis/body part
- Sexual activity with child offender 18 or over penetrate anus/vagina/mouth by penis/body part
- Sexual activity with female child Under 13 offender 18 or over penetrate anus/vagina/mouth by penis/body part
- Sexual activity with male child Under 13 offender 18 or over penetrate anus/vagina/mouth by penis/body part
- Sexual activity female child under 16 offender 18 or over penetrate anus/vagina/mouth by penis/body part
- Sexual activity with male child under 16 offender 18 or over penetrate anus/vagina/mouth by penis/body part
- Cause/incite child to engage in sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part
- Cause/incite female child Under 13 engage sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part
- Cause/incite male child Under 13 engage sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part
- Cause/incite female child under 16 engage sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part
- Cause/incite male child under 16 engage sexual act offender 18+ penetrate anus/vagina/mouth by penis/body part
- Engage in sexual activity in presence of child offender 18 or over
- Engage in sexual activity in presence of child aged under 13 offender 18 or over
- Engage in sexual activity in presence of child aged under 16 offender 18 or over
- Cause child to watch sexual act
- Cause child under 13 to watch sexual act
- Cause child under 16 to watch a sexual act
- Sexual act with child offender child/young person penetrate anus/vagina/mouth by penis/body part



- Sexual act with female child Under 13 offender child/young person penetrate anus/vagina/mouth by penis/body part
- Sexual act with male child Under 13 offender child/young person penetrate anus/vagina/mouth by penis/body part
- Sexual act with female child under 16 offender child/young person penetrate anus/vagina/mouth by penis/body part
- Sexual act with male child under 16 offender child/young person penetrate anus/vagina/mouth by penis/body part
- Incite child engage sex act off child/young person penetrate anus/vagina/mouth by penis/body part
- Incite female child Under 13 engage sex act off child/young person penetrate anus/vagina/mouth by penis/body part
- Incite male child Under 13 engage sex act off child/young person penetrate anus/vagina/mouth by penis/body part
- Incite female child under 16 engage sex act off child/young person penetrate anus/vagina/mouth by penis/body part
- Incite male child under 16 engage sex act off child/young person penetrate anus/vagina/mouth by penis/body part
- Engage in sexual activity in presence of child offender is child/young person
- Engage in sexual activity in presence of child Under 13 offender is child/young person
- Engage in sexual activity in presence of child under 16 offender is child/young person
- Sexual activity - abuse of position of trust
- Sexual activity with female under 13 offender 18 or over abuse of position of trust
- Sexual activity with male under 13 offender 18 or over abuse of position of trust
- Sexual activity with female 13-17 offender does not believe victim is over 18 abuse of position of trust
- Sexual activity with male 13-17 offender does not believe victim is 18 or over abuse of position of trust
- Cause/incite sexual activity - abuse of position of trust
- Cause/incite sexual activity with female under 13 offender 18 or over abuse of position of trust
- Cause/incite sexual activity with male under 13 offender 18 or over abuse of position of trust
- Cause/incite sexual activity with female 13-17 offender 18 or over abuse of position of trust
- Cause/incite sexual activity with male 13-17 -offender 18 or over-abuse of position of trust
- Sexual activity in presence of child - offender 18 or over - abuse of position of trust
- Sexual activity in presence of child under 13 - offender 18 or over - abuse of position of trust
- Sexual activity in presence of child 13 to 17- offender 18 or over - abuse of position of trust
- Cause child to watch sexual act - offender 18 or over - abuse of position of trust
- Cause child under 13 to watch sexual act - offender 18 or over - abuse of position of trust
- Cause child 13 to 17 to watch sexual act - offender 18 or over - abuse of position of trust
- Sexual activity with a person with mental disorder - no penetration
- Sexual activity with a female with mental disorder - no penetration
- Sexual activity with a male with a mental disorder - no penetration
- Sexual activity with person with

- mental disorder - penetration
- Sexual activity with female with mental disorder - penetration of anus/vagina/mouth by penis/body part
- Sexual activity with male with mental disorder - penetration of anus/ vagina/ mouth by penis/body part
- Cause/incite sexual activity with a person with a mental disorder/ learning disability no penetration
- Cause/incite sexual activity with a female with a mental disorder/ learning disability no penetration
- Cause/incite sexual activity with a male with a mental disorder/learning disability no penetration
- Cause/incite sexual activity with person with mental disorder - penetration
- Cause/incite sexual activity with female with mental disorder penetrate anus/vagina/ mouth by penis/body part
- Cause/incite sexual activity with male with mental disorder - penetrate anus/vagina/ mouth by penis/body part
- Engage in sexual activity in presence of a person with a mental disorder
- Cause a person with a mental disorder/learning disability to watch a sexual act
- Procure sexual activity with person with mental disorder by inducement/ threat/ deception
- Procure sexual activity with person with mental disorder by inducement/ threat/deception - no penetration
- Procure sex act person mental disorder by induce/threat/deceive penetrate anus/vagina/mouth by penis/body part
- Cause person with mental disorder engage/agree to sex act - inducement/threat/deception
- Cause person with mental disorder engage/agree to sex act-inducement/ threat/deception - no penetration
- Cause person mental disorder engage/agree sex act-inducement/ threat/deception - penetration anus/ vagina/mouth
- Cause a person with mental disorder to watch a sexual act by deception/ threat/inducement
- Sexual activity with person with mental disorder/learning disorder - care worker – no penetration
- Sexual activity with female person with mental disorder/learning disorder - care worker - no penetration
- Sexual activity with male person with a mental disorder/learning disability - care worker – no penetration
- Sex act person mental disorder/ learning disability - care worker- penetration
- Sex act female mental disorder/ learning disability - care worker- penetrate anus/vagina/mouth by penis/body part
- Sex act male mental disorder/ learning disability - care worker - penetrate anus/vagina/mouth by penis/body part
- Cause/incite person with mental disorder/learning disability engage in sex act - care worker - no penetration
- Cause incite person mental disorder/ learning difficulty engage sex act- care worker - penetrate anus/vagina/ mouth
- Sexual activity in presence of person with mental disorder/learning disability – care worker
- Cause person with mental disorder/ learning disability to watch sexual activity – care worker
- Sexual penetration of a corpse
- Sexual activity with child under 13 - offender 18 or over - no penetration
- Sexual activity with female child under 13 - offender 18 or over - no penetration
- Sexual activity with male child under 13 - offender 18 or over - no penetration

- Sexual activity with child under 16 offender 18 or over - no penetration
- Sexual activity with female child under 16 - offender 18 or over - no penetration
- Sexual activity with male child under 16 - offender 18 or over - no penetration
- Cause/incite child under 13 to engage in sexual activity - offender 18 or over – no penetration
- Cause/incite female child under 13 to engage in sexual activity - offender 18 or over – no penetration
- Cause/incite male child under 13 to engage in sexual act- offender 18 or over – no penetration
- Cause/incite child under 16 to engage in sexual activity - offender 18 or over – no penetration
- Cause/incite female child under 16 to engage in sexual activity - offender 18 or over – no penetration
- Cause/incite male child under 16 to engage in sexual activity - offender 18 or over – no penetration
- Sexual activity with child under 13 - offender aged under 18 - no penetration
- Sexual activity with female child under 13- offender aged under 18 - no penetration
- Sexual activity with male child under 13 - offender aged under 18 - no penetration
- Sexual activity with child under 16 - offender under 18 - no penetration
- Sexual activity with female child under 16- offender under 18 - no penetration
- Sexual activity with male child under 16 - offender under 18 - no penetration
- Cause/incite child under 13 engage in sexual activity-offender under 18 - no penetration
- Cause/incite female child under 13 engage in sexual activity-offender under 18 – no penetration
- Cause/incite male child under 13 to engage in sexual activity - offender under 18 - no penetration
- Cause/incite female child under 16 engage in sexual activity- offender under 18 no penetration
- Cause/incite male child under 16 engage in sexual activity - offender under 18 – no penetration
- Cause child under 13 to watch sexual act offender is child/young person
- Cause child under 16 to watch sexual act offender is child/young person
- Causing girl under 16 to become a prostitute
- Encouraging prostitution of girl under 16
- Encouraging sexual intercourse with girl under 16
- Causing defective to become prostitute
- Encouraging prostitution of female defective
- Arrange/facilitate child - prostitution of/involvement in pornography
- Arrange /facilitate child under 13- prostitution of/involvement in pornography
- Arrange/facilitate child 13 to 17- prostitution of/involvement in pornography
- Paid for sexual services of a child under 13 no penetration
- Paid for sexual services of a female child under 13 no penetration
- Paid for sexual services of a male child under 13 no penetration
- Paid for sexual services of child under 13 - penetration
- Paid for sexual services of female child under 13 penetration of anus/ vagina/mouth by penis/body part
- Paid for sexual services of male child under 18 – no penetration

- under 13 penetration of anus/vagina/  
mouth by penis/body part
- Paid-for sexual services of child 113-  
to 15 no penetration
- Paid for sexual services of female  
child 13 to 15 - no penetration
- Paid for sexual services of male child  
13 to 15 - no penetration
- Paid for sexual services of child 13 to  
15 - penetration
- Paid for sexual services of male child  
13 to 15 penetration
- Paid for sexual services of female  
child 13 to 15 - penetration
- Paid for sexual services of child 16  
or 17
- Paid for sexual services of female  
child 16 or 17
- Paid for sexual services of male child  
16 or 17
- Cause/incite/prostitution of/  
pornography involving a child
- Cause/incite/prostitution of/  
pornography involving a child under  
13
- Cause/incite prostitution of/  
pornography involving child 13 to 17
- Control child prostitution of/  
involvement in pornography
- Control child under 13 - prostitution  
of/involvement in pornography
- Control child 13 to 17 - prostitution  
of/involvement in pornography
- Commit any offence by kidnap/false  
imprisonment w/i to commit a sexual  
offence
- Sexual activity abuse of position of  
trust
- Sexual activity with female under  
13 offender 18 or over - abuse of  
position of trust - institution
- Sexual activity with male under  
13 offender 18 or over - abuse of  
position of trust - institution
- Sexual act with female 13 - 7 offender  
does riot believe victim 18+ abuse of  
position of trust - institution
- Sexual act with male 13 - 17 offender  
does not believe victim 18+ abuse of  
position of trust - institution
- Cause/incite sexual activity with  
female under 13 offender 18 or over  
abuse of position of trust - Premises
- Cause/incite sexual activity with male  
under 13 offender 18 or over abuse  
of position of trust s. 21 Premises
- Cause/incite sexual activity with  
female 13 - 17 offender 18 or over  
abuse of position of trust s. 21  
Premises
- Cause/incite sexual activity with male  
13 - 17 offender 18 or over abuse of  
position of trust s. 21 Premises
- Sexual activity in presence of child  
under 13 offender 18 or over abuse  
of position of trust s. 21 Premises
- Sexual activity in presence of child  
13 - 17 offender 18 or over abuse of  
position of trust s. 21 Premises
- Cause child under 13 to watch sexual  
act offender 18 or over abuse of  
position of trust s. 21 Premises
- Cause child 13 - 17 to watch sexual  
act offender 18 or over abuse of  
position of trust s. 21 Premises
- Conspiracy - outside UK - sex offence
- Conspiracy to commit a triable either  
way offence outside the UK - sexual  
offence
- Arson
- Arson endangering life
- Unlawfully and maliciously set fire to  
any property
- Committing arson recklessly.
- Conspiracy to commit triable either  
way offence outside the UK – offence  
against property
- Criminal damage endangering life
- Destroying property with intent to  
endanger life
- Damaging property with intent to  
endanger life
- Possessing anything w/i to cause  
damage risking life

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- Having articles to destroy property so as to endanger life
  - Having articles to damage property so as to endanger life
  - Threats to damage property and so endanger life
  - Threatening to destroy own property so as to endanger life
  - Threatening to damage own property so as to endanger life
  - Blocking railway with intent to obstruct - endangering life
  - Damaging railway with intent to obstruct endangering life
  - Obstructing engine or carriage on railway - endangering life
  - Exhibiting false signals to endanger shipping
  - Exhibiting false signal to endanger shipping and thus life
  - Removing buoy etc. - endangering life
  - Master of ship doing any act likely to cause death or serious injury to a person on board.
  - Seaman on ship doing any act likely to cause loss, damage or death
  - Seaman on ship performing act likely to cause loss death or injury to any person on board
  - Destroy channel tunnel train or tunnel system so as to endanger or be likely to endanger safety
  - Destroy goods on channel tunnel train or tunnel system so as to endanger or be likely to endanger safety
  - Damage channel tunnel train so as to endanger or be likely to endanger safety
  - Damage goods on channel tunnel train so as to endanger or be likely to endanger safety
  - Damage tunnel system so as to endanger or be likely to endanger safety
  - Damage goods within tunnel system so as to endanger or be likely to endanger safety
  - Destroy or damage property so as to endanger safety
  - Destroying or damaging property with intent to endanger life
  - Destroying or damaging property recklessly as to endanger life
  - Threatening to damage or destroy own property so as to endanger life
  - Having article with intent to damage or destroy property so as to endanger life
  - Destroying aircraft
  - Damaging aircraft
  - Endangering aircraft
  - Placing device to destroy aircraft
  - Placing device to damage aircraft
  - Placing device to endanger aircraft
  - Destroying air navigation facilities
  - Damaging air navigation facilities
  - Endangering aircraft by false information
  - Inducing offence against aircraft outside United Kingdom
  - Assisting offence against aircraft outside United Kingdom
  - Possessing dangerous articles on aircraft
  - Possessing dangerous articles on aerodrome
  - Possessing dangerous articles on air navigation installation
  - Interfering with operation of air navigation facilities
  - Committing act of violence at civil aviation aerodrome, causing death
  - Committing act of violence at civil aviation aerodrome, causing serious personal injury
  - Committing act of violence at civil aviation aerodrome likely to cause death or serious personal injury
  - Destroy/seriously damage property/ aircraft not in service endangering safe operation or safety of persons
  - Disrupting services endangering of
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- civil aerodrome endangering safe operation of safety of persons
- Destroying a ship or sea platform
- Destroying ship
- Destroying fixed platform
- Damage ship, cargo or sea platform endangering or likely to endanger safety
- Damaging ship, in manner endangering or likely to endanger its safe navigation
- Damaging ships cargo in manner endangering or likely to endanger the ship's safe navigation
- Damaging ship and cargo in manner endangering or likely to endanger the ship's safe navigation
- Damaging fixed platform in a manner endangering or likely to endanger its safety
- Violent act on ship or sea platform likely to endanger safety
- Committing on board ship act of violence likely to endanger its safety
- Committing on fixed platform act of violence likely to endanger its safety
- Placing on ship device or substance likely to destroy it
- Causing to be placed on ship device or substance likely to destroy it
- Placing on ship device or substance likely to damage it, endangering its safe navigation
- Causing to be placed on ship device or substance likely to damage it, endangering its safe navigation
- Placing on ship device or substance likely to damage ship's cargo, endangering ship's safe navigation
- Causing to be placed on ship device/ substance likely to damage ship's cargo, endangering ship's navigation
- Placing on ship device or substance likely to damage ship and its cargo, endangering ship's safe navigation
- Causing to be placed on ship device or substance likely to damage ship and cargo, endangering ship
- Destroy/damage property used for navigation likely to endanger navigation
- Destroy property used for navigation likely to endanger navigation
- Damage property used for navigation likely to endanger navigation
- Interference with property used for navigation likely to endanger safe navigation
- Communicating false information which endangers navigation
- Compulsion by threatening to destroy or damage a ship or sea platform
- Compulsion by threatening to destroy or damage property used for navigation
- Inducing/assist in the commission of offence relating to safety of ship cargo or platform outside UK
- Inducing the commission of offence relating to safety of ship cargo or sea platform outside UK
- Assist commission of offence relating to safety of ship cargo or sea platform outside UK
- Placing on fixed platform device or substance likely to destroy it
- Causing to be placed on fixed platform device or substance likely to destroy it.
- Placing on fixed platform device or substance likely to cause damage thus endangering safety
- Causing to be placed on fixed platform device or substance likely to damage it thus endangering its safety
- Prohibition of carriage of weapons and munitions of war
- Prohibition of carriage of dangerous goods or substances
- Endangering safety of aircraft
- Endangering safety of persons or property
- Recklessly acting in a manner likely to endanger the aircraft

- Negligently acting in a manner likely to endanger the aircraft
- Recklessly causing the aircraft to endanger any person or property
- Recklessly permitting the aircraft to endanger any person or property
- Negligently causing the aircraft to endanger any person or property
- Negligently permitting the aircraft to endanger any person or property
- Making false reports of any incident relating to aircraft defect/malfunction so as to endanger aircraft
- Pilot of ship doing any act causing loss or destruction or endangering ship or persons on board
- Pilot by omission fail to preserve ship or equipment or persons on board from death or serious injury
- Endanger safety of an aircraft
- Recklessly endanger safety of an aircraft
- Negligently endanger safety of an aircraft
- Endanger safety of any person or property (aircraft)
- Recklessly causing aircraft to endanger any person or property
- Recklessly permit aircraft to endanger any person or property
- Negligently cause aircraft to endanger any person or property
- Negligently permit aircraft to endanger any person or property
- Carrying any weapon or munition of war on aircraft
- Conspiracy - outside the UK - property
- Conspiracy to commit triable either way offence outside the UK - offences against property
- Robbery
- Robbery with firearm, imitation firearm, shotgun or air weapon
- Assault w/i to rob
- Robbery - being armed with offensive weapon
- Robbery with violence
- Assault with intent to rob
- Conspiracy to commit triable either way offence outside the UK - theft and kindred offences
- Aggravated burglary
- Aggravated burglary (comprising commission of offence - in dwelling)
- Aggravated burglary (comprising commission of offence - other than in dwelling)
- Aggravated burglary intent to commit offence - in dwelling
- Aggravated burglary intent to commit offence - other than in dwelling
- Burglary w/i to commit rape
- Burglary with intent to rape - in dwelling
- Burglary with intent to rape - other than in dwelling
- Blackmail
- Utter a letter demanding with menaces
- Demanding with menaces with intent
- Theft of mail accompanied by robbery
- Treason
- Compassing, devising or plotting death of sovereign
- Compassing, devising or plotting death of sovereign's spouse
- Compassing, devising or plotting death of heir
- Compassing, devising or plotting death of sovereign's eldest son
- Violating king's wife
- Violating king's eldest daughter
- Violating wife of king's eldest son or heir
- Levying war against the sovereign in his or her realm
- Giving aid and comfort to sovereign's enemies in his or her realm
- Giving aid and comfort to sovereign's enemies outside his or her realm

- Adhering to sovereign's enemies in his or her realm
- Slaying lord high chancellor
- Slaying lord high treasurer
- Slaying sovereign's justice
- Compassing, contriving, planning or advising death or destruction of sovereign
- Compassing, contriving, planning or advising death or destruction of sovereign's heir or successor
- Compassing, contriving, planning or advising maiming or wounding of sovereign
- Compassing, contriving, planning or advising maiming or wounding of sovereign's heir or successor
- Compassing, contriving, planning or advising imprisonment or restraint of sovereign
- Compassing, contriving, planning or advising imprisonment or restraint of sovereign's heir or successor
- Attempting to discharge or aim firearm at sovereign with intent to injure
- Discharging or aiming firearm at sovereign with intent to alarm
- Attempting to discharge or aim firearm at sovereign with intent to alarm
- Throwing offensive weapon or matter at sovereign with intent to injure
- Throwing offensive weapon or matter at sovereign with intent to alarm
- Misprision of treason
- Being a member of proscribed organisation
- Soliciting support for proscribed organisation
- Receiving support for proscribed organisation
- Contributing support for proscribed organisation
- Arranging meeting in support of proscribed organisation
- Addressing meeting in support of proscribed organisation
- Assisting in the preparation of meeting in support of proscribed organisation
- Public display of support for proscribed organisation
- Failing to comply with exclusion order
- Assisting excluded person to contravene exclusion order
- Harboursing excluded person
- Soliciting money in support of terrorism
- Soliciting property in support of terrorism
- Receiving money in support of terrorism
- Receiving property in support of terrorism
- Contributing money in support of terrorism
- Contributing property in support of terrorism
- Failing to disclose information on terrorist activity
- Offence committed outside United Kingdom against protected person (specify offence)
- Being a member of a proscribed organisation.
- Soliciting support for proscribed organisation.
- Receiving support for proscribed organisation.
- Contributing support for proscribed organisation.
- Arranging meeting in support of proscribed organisation.
- Addressing meeting in support of proscribed organisation.
- Assisting in the preparation of meeting in support of proscribed organisation.
- Public display of support for proscribed organisation.
- Failing to comply with exclusion order.



- Assisting excluded person to contravene exclusion order.
- Soliciting money in support of terrorism.
- Soliciting property in support of terrorism.
- Receiving money in support of terrorism.
- Receiving property in support of terrorism.
- Contributing money in support of terrorism.
- Contributing property in support of terrorism.
- Failing to disclose information on terrorist activity.
- Failing to produce a valid passport under schedule 8 of the prevention of terrorism act.
- Failing to produce identifying document under schedule 3 of the prevention of terrorism act.
- Failing to declare any relevant document under schedule 3 of the prevention of terrorism act.
- Failing to produce any relevant documents under schedule 3 of the prevention of terrorism act.
- Professing to belong to proscribed organisation
- Arranging a meeting in support of proscribed organisation
- Arranging meeting to further activity of proscribed organisation
- Arranging meeting to be addressed by persons belonging or professing to belong to a proscribed organisation
- Addressing meeting to further activity of proscribed organisation
- Addressing meeting to be addressed by person belonging, or professing to belong to proscribed organisation
- Contributing support for a meeting in support of proscribed organisation.
- Assisting meeting to be addressed by persons belonging or professing to belong to proscribed organisation
- Assisting in preparing meeting to further activity of proscribed organisation
- Wearing item of dress in support of proscribed organisation
- Wearing article in support of proscribed organisation
- Carrying article in support of proscribed organisation
- Displaying article in support of proscribed organisation
- Failing to comply with an exclusion order.
- Harbours excluded person.
- Soliciting money in support of proscribed organisation.
- Soliciting property in support of proscribed organisation.
- Gives, lends, receives, accepts or otherwise make available money in support of proscribed organisation.
- Contributing money in support of proscribed organisation
- Lending money in support of proscribed organisation
- Receiving or accepting money in support of proscribed organisation
- Making money available in support of proscribed organisation
- Gives, lends, receives, accepts or otherwise make available property in support of proscribed organisation.
- Contributing property in support of proscribed organisation
- Lending property in support of proscribed organisation
- Receiving or accepting property in support of proscribed organisation
- Making property available in support of proscribed organisation
- Enters into or otherwise concerned in arrangement to make available money for proscribed organisation.
- Enters into or otherwise concerned in arrangement to make property available for proscribed organisation.

- Assisting in the retention of terrorist funds.
- Failing to disclose information to prevent the commission of an act of terrorism.
- Failing to disclose information to prevent the apprehension of any person involved in terrorist activity.
- Failing to present oneself on landing/embarkation when required by examining officer,
- Failing to produce valid passport when required by examining officer.
- Failing to produce identifying documents when required by examining officer.
- Failing to declare any relevant documents when required by examining officer.
- Failing to produce any relevant documents when required by examining officer.
- Failing to complete and produce a landing/embarkation card when required by examining officer.
- Arranging availability of money for use in terrorism
- Arranging availability of property for use in terrorism
- Making disclosure likely to prejudice investigation
- Frustrating terrorist investigation
- Fail to stop a vehicle when required to do so by constable acting to prevent acts of terrorism
- A person failing to stop when required to do so by a constable acting to prevent acts of terrorism
- Wilfully obstruct a constable exercising his powers whilst acting to prevent acts of Terrorism
- Possession of an article for a purpose connected with the commission of a terrorist offence
- Unlawfully collect information likely to be of use to terrorists
- Unlawfully record information likely to be of use to terrorists
- Unlawfully possess any document or record containing information likely to be of use to terrorists
- Securing entry of excluded person.
- Using property in support of terrorism,
- Possessing money in support of terrorism.
- Possessing property in support of terrorism.
- Using money for benefit of proscribed organisation.
- Possessing money for the benefit of proscribed organisation.
- Using property for the benefit of proscribed organisation.
- Possessing property for the benefit of proscribed organisation.
- Falsify/conceal material to frustrate terrorist investigation.
- Falsifying material to frustrate terrorist investigation.
- Causing falsification of material to frustrate terrorist investigation.
- Permitting falsification of material to frustrate terrorist investigation.
- Conceal material to frustrate terrorist investigation.
- Causing concealment of material to frustrate terrorist investigation.
- Permitting concealment of material to frustrate terrorist investigation.
- Destroying material to frustrate terrorist investigation.
- Causing destruction of material to frustrate terrorist investigation.
- Permitting destruction of material to frustrate terrorist investigation.
- Disposing of material to frustrate terrorist investigation.
- Causing disposal of material to frustrate terrorist investigation.
- Permitting disposal of material to frustrate terrorist investigation.
- Making disclosure to frustrate investigation following disclosure to constable.

- Falsifying material to frustrate terrorist investigation following disclosure to constable.
- Causing falsification of material to frustrate terrorist investigation following disclosure o constable.
- Permitting falsification of material to frustrate terrorist investigation following disclosure to constable.
- Concealing material to frustrate terrorist investigation following disclosure to constable.
- Causing concealment of material to frustrate terrorist investigation following disclosure to constable.
- Permitting concealment of material to frustrate terrorist investigation following disclosure to constable.
- Destroy material to frustrate terrorist investigation following disclosure to constable.
- Causing destruction of material to frustrate terrorist investigation following disclosure to constable.
- Permitting destruction of material to frustrate terrorist investigation following disclosure to constable.
- Disposing of material to frustrate terrorist investigation following disclosure to constable.
- Causing disposal of material to frustrate terrorist investigation following disclosure to constable.
- Permitting disposal of material to frustrate terrorist investigation following disclosure to constable.
- Making disclosure to frustrate investigation following disclosure in course of employment.
- Falsifying material to frustrate terrorist investigation following disclosure in the course of employment.
- Causing falsification of material to frustrate terrorist investigation following disclosure in employment.
- Permitting falsification of material to frustrate terrorist investigation following disclosure in employment
- Conceal material to frustrate terrorist investigation following disclosure in course of employment.
- Causing concealment of material to frustrate terrorist investigation following disclosure in employment.
- Permitting concealment of material to frustrate terrorist investigation following disclosure in employment.
- Destroying material to frustrate terrorist investigation following disclosure in the course of employment.
- Causing destruction of material to frustrate terrorist investigation following disclosure in employment.
- Permitting destruction of material to frustrate terrorist investigation following disclosure in employment.
- Disposing of material to frustrate terrorist investigation following disclosure in course of employment.
- Causing disposal of material to frustrate terrorist investigation following disclosure in employment.
- Permitting disposal of material to frustrate terrorist investigation following disclosure in employment.
- Failing to disclose knowledge or suspicion that another was providing financial assistance for terrorism.
- Using or possessing money or property in support of proscribed organisation
- Receiving or accepting money or property in support of proscribed organisation
- Giving money or property in support of proscribed organisation
- Arranging availability of money or property in support of proscribed organisation
- Failing to produce or declare relevant document when required by examining officer
- Arranging availability of money or property for use in terrorism
- Soliciting support for a proscribed

- organisation
- Meeting support/further activities of proscribed organisation/addressed by member of proscribed organisation
  - Address meeting to support/further activities of or is to be addressed by member of proscribed group
  - Being knowingly concerned in arrangements for securing or facilitating entry into UK of excluded person
  - Soliciting money or property in support of terrorism
  - Receiving money or property in support of terrorism
  - Using or possessing money or property in support of terrorism
  - Contributing money or property in support of terrorism
  - Soliciting money or property in support of proscribed organisation
  - Person fail to stop for search to prevent terrorism
  - Terrorism - obstruct constable (powers to search person)
  - Terrorism - obstruct search (port/ border controls)
  - Terrorism - fail to move vehicle
  - Terrorism - fail to leave cordoned area
  - Fail to leave premises in cordoned area
  - Terrorism - fail to move vehicle from cordoned area
  - Terrorism - leave vehicle
  - Terrorism - disobey order re access to cordoned area
  - Terrorism obstruct constable (powers in cordoned areas)
  - Terrorism - obstruct search (cordoned area)
  - Failing to furnish information when required by examining officer
  - Fail to stop vehicle when required by constable in exercise of power conferred under s. 44(1)
  - Fail to stop vehicle when required
  - by constable in exercise of power conferred under s. 44(2)
  - Wilfully obstruct constable in exercise of power conferred under ss. 44(1) or 44(2)
  - Fail to furnish information when required by examining officer
  - Fail to produce valid passport or identity document when required to do so by examining officer
  - Fail to declare or produce any relevant document when required to so by examining officer
  - Parking a vehicle in contravention of a prohibition restriction imposed by virtue of s. 48
  - Driver/person in charge of vehicle permit to remain at rest fail to move when ordered by uniformed constable
  - Fail to leave cordoned area when ordered to do so by uniformed constable
  - Fail to leave premises adjacent to cordoned area When ordered by uniformed constable
  - Driver or person in charge of vehicle fail to move from cordoned area when ordered by uniformed constable
  - Fail to comply with prohibition/ restriction on access to a cordoned area by uniformed Constable
  - Obstructing a search within a cordoned area
  - Fail to submit to search by examining officer or person acting on his behalf
  - Fail to complete and produce a landing or embarkation card when required by examining officer
  - Invite another to provide money/ property intending it be used or suspect use for purpose of terrorism
  - Receive money/property with intent to use or suspect it may be used for purpose of terrorism
  - Provide money/property for use or suspect it will be used for the purpose of terrorism
  - Invite support for proscribed

- organisation where support is not restricted to provision of money/property
- Arrange meeting three or more persons which supports/further activity or addressed by member proscribed organisation
  - Address meeting of three or more persons to encourage support for proscribed organisation
  - Using money or other property for the purposes of terrorism
  - Concerned in arrangement whereby money/property is made available to another for purpose of terrorism
  - Concerned in arrangement facilitating retention/control by/on behalf another of terrorist property
  - Belonging or professing to belong to proscribed organisation
  - Wearing any item of dress in support of proscribed organisation
  - Wearing/carrying/displaying any article in support of proscribed organisation
  - Obstructing constable in the execution of his duty in a cordoned area
  - Providing instruction or inviting another to receive instruction in weapon training (terrorism)
  - Directing terrorist training
  - Inciting terrorism overseas
  - Possess money or other property with intent it should be used for the purpose of terrorism
  - Possess article for the purpose of terrorism
  - Terrorism - receive weapons instruction or training
  - Terrorism - disclose/interfere with information
  - Terrorism - disclose information likely to prejudice investigation
  - Terrorism - interfere with material likely to be relevant to investigation
  - Terrorism - disclose information likely to prejudice investigation following disclosure
  - Terrorism - interfere with material likely to be relevant to investigation following disclosure
  - Fail- to-disclose belief/suspicion of financing-terrorism
  - Financing terrorism outside the UK
  - Possess/record information useful to terrorism
  - Possess record of information useful to terrorism
  - Record information useful to persons engaged in terrorism
  - Commit an act for or for purpose of terrorism-explosion/biological/chemical weapons
  - Commit an act for purpose of terrorism - explosions/biological/chemical weapons
  - Commit an act of terrorism - explosion! biological/chemical weapon
  - Terrorism - weapons instruction! training
  - Terrorism - invite another to receive weapons instruction/training
  - Terrorism - provide weapons training/instruction
  - Possess document or information useful to terrorism
  - Knowingly cause a nuclear explosion
  - Develop produce participate in development production of nuclear weapons
  - Possess a nuclear weapon
  - Participate in the transfer of a nuclear weapon
  - Engage in military operations intending to use or threaten to use a nuclear weapon
  - Use noxious substance/thing likely too cause serious violence against a person anywhere in the world
  - Use noxious substance/thing likely to have the effect of causing serious damage anywhere in the world

- Use noxious substance/thing likely to endanger human life or create serious risk to health or safety
- Use noxious thing/substance likely to induce in public fear that action would endanger lives/health/safety
- Place substance/thing to create belief it is likely to contain noxious substance and danger to health/safety
- Send substance/thing any means anywhere in the world to induce belief of noxious substance/danger to health
- Communicate false information to induce person to believe noxious substance/danger to health is present
- Fail to disclose information which may be of material assistance preventing commission of terrorism
- Committing act prejudicial to the state
- Wrongful communication of secret information
- Communicating information relating to munitions to a foreign power.
- Wrongful receipt of secret information
- Harbours spies
- Unlawful disclosure of secrets by serving member of security/intelligence services.
- Unlawful disclosure of secrets by past member of security/intelligence services.
- Unlawful disclosure of secrets by person notified subject to security/intelligence provisions.
- Damaging disclosure of secrets by crown servant.
- Damaging disclosure of secrets by government contractor.
- Damaging disclosure of secrets by former crown servant.
- Damaging disclosure of secrets by former government contractor.
- Damaging disclosure of defence matters by crown servant.
- Damaging disclosure of defence matters by government contractor.
- Damaging disclosure of defence matters by former crown servant.
- Damaging disclosure of defence matters by former government contractor.
- Crown servant disclosing information facilitating escape from custody
- Government contractor disclosing information facilitating escape from custody
- Former crown servant disclosing information facilitating escape from custody
- Former government contractor disclosing information facilitating escape from custody
- Conspiracy outside the UK – against state
- Conspiracy to commit triable either way offence outside the UK – offence against the state
- Riot
- Placing article causing bomb hoax
- Despatching article causing bomb hoax
- Organising quasi-military force
- Training quasi-military force
- Conspiracy - outside the UK - disorder/riot
- Conspiracy to commit triable either way offence outside the UK - public disorder and rioting
- Escaping from lawful custody
- Attempt to escape from lawful custody
- Rescuing prisoner from lawful custody
- Assisting escape from lawful custody
- Breaking prison (sentenced prisoner)
- Breaking prison (remand prisoner)
- Prison mutiny
- Participating in prison mutiny
- Importing controlled drugs

- Exporting controlled drugs
- Producing controlled drug
- Producing controlled drug - Class A
- Producing controlled drug - Class A - Cocaine
- Producing controlled drug - Class A - Heroin
- Producing controlled drug - Class A - LSD
- Producing controlled drug - Class A - MDMA
- Producing controlled drug - Class A - other
- Producing controlled drug - Class B
- Producing controlled drug - Class B - Amphetamine
- Producing controlled drug - Class B - Cannabis
- Producing controlled drug - Class 8-other
- Producing controlled drug - Class C
- Producing controlled drug - class not specified
- Being concerned in producing controlled drug - Class A
- Being concerned in producing controlled drug - Class A - Cocaine
- Being concerned in producing controlled drug - Class A - Heroin
- Being concerned in producing controlled drug - Class A- LSD
- Being concerned in producing controlled drug - Class A- MDMA
- Being concerned in producing controlled drug - Class A - other
- Being concerned in producing controlled drug - Class B
- Being concerned in producing controlled drug - Class B - Amphetamine
- Being concerned in producing controlled drug - Class B - Cannabis
- Being concerned in producing controlled drug - Class B - other
- Being concerned in producing controlled drug - Class C
- Being concerned in producing controlled drug - class not specified
- Produce a controlled drug - Class A - Crack Cocaine
- Produce a controlled drug - Class A - Methadone
- Produce a controlled drug - Class B - Cannabis resin
- Concerned in the production of a controlled drug - Class A - Crack Cocaine
- Concerned in the production of a controlled drug - Class A - Methadone
- Concerned in the production of a controlled drug - Class B - Cannabis resin
- Production of a controlled drug - Anabolic Steroids
- Being concerned in the production by another of a controlled drug - Anabolic Steroids
- Producing controlled drug Class C - Anabolic Steroids
- Being concerned in producing controlled drug - Class C - Anabolic Steroids
- Production of hydroxy-n-butric acid (GHB)
- Concerned in the production of hydroxy-n-butric acid (GHB)
- Producing a controlled drug - Class C
- Being concerned in producing a controlled drug - Class C
- Being concerned in producing a controlled drug - Class C - Anabolic Steroids
- Production of hydroxy-n-butric acid (GHB)
- Concerned in the production of hydroxy-n-butric acid (GHB)
- Supplying controlled drug
- Supplying controlled drug - Class A
- Supplying controlled drug - Class A - Cocaine
- Supplying controlled drug - Class A -

Heroin

- Supplying controlled drug - Class A - LSD
- Supplying controlled drug - Class A - MDMA
- Supplying controlled drug - Class A - other
- Supplying controlled drug Class B
- Supplying controlled drug - Class B - Amphetamine
- Supplying controlled drug - Class B - Cannabis
- Supplying controlled drug - Class B - other
- Supplying controlled drug - Class C
- Supplying controlled drug - class not specified
- Offering to supply controlled drug - Class A
- Offering to supply controlled drug - Class A - Cocaine
- Offering to supply controlled drug - Class A - Heroin
- Offering to supply controlled drug - Class A - LSD
- Offering to supply controlled drug - Class A - MDMA
- Offering to supply controlled drug - Class A - other
- Offering to supply controlled drug Class B
- Offering to supply controlled drug - Class B - Amphetamine
- Offering to supply controlled drug - Class B - Cannabis
- Offering to supply controlled drug - Class B - other
- Offering to supply controlled drug - Class C
- Offering to supply controlled drug - class not specified
- Being concerned in supplying controlled drug Class A
- Being concerned in supplying controlled drug - Class A - Cocaine
- Being concerned in supplying controlled drug Class A - Heroin
- Being concerned in supplying controlled drug - Class A - LSD
- Being concerned in supplying controlled drug - Class A - MDMA
- Being concerned in supplying controlled drug - Class A - other
- Being concerned in supplying controlled drug - Class B
- Being concerned in supplying controlled drug - Class B - Amphetamine
- Being concerned in supplying controlled drug - Class B - Cannabis
- Being concerned in supplying controlled drug - Class B - other
- Being concerned in supplying controlled drug - Class C
- Being concerned in supplying controlled drug - class not specified
- Being concerned in offer to supply controlled drug - Class A
- Being concerned in offer to supply controlled drug - Class A - Cocaine
- Being concerned in offer to supply controlled drug - Class A - Heroin
- Being concerned in offer to supply controlled drug - Class A - LSD
- Being concerned in offer to supply controlled drug - Class A - MDMA
- Being concerned in offer to supply controlled drug - Class A - other
- Being concerned in offer to supply controlled drug - Class B
- Being concerned in offer to supply controlled drug - Class B - Amphetamine
- Being concerned in offer to supply controlled drug - Class B - Cannabis
- Being concerned in offer to supply controlled drug - Class B - other
- Being concerned in offer to supply controlled drug - Class C
- Being concerned in offer to supply controlled drug - class not specified



- Being concerned in supply controlled drug Class B - Cannabis resin
- Supplying controlled drug - Class B - Cannabis resin.
- Supply a controlled drug - Class A - Crack Cocaine
- Supply a controlled drug - Class A - Methadone
- Offer to supply a controlled drug - Class A - Crack Cocaine
- Offer to supply a controlled drug - Class A - Methadone
- Offer to supply a controlled drug - Class B - Cannabis resin
- Concerned in the supply of a controlled drug - Class A - Crack Cocaine
- Concerned in the supply of a controlled drug Class A - Methadone
- Concerned in offer to supply a controlled drug - Class A - Crack Cocaine
- Concerned in offer to supply a controlled drug - Class A - Methadone
- Concerned in offer to supply a controlled drug - Class B - Cannabis resin
- Supply or offer to supply controlled drug -Anabolic Steroid
- Being concerned in supplying controlled drug to another - Anabolic Steroid
- Being concerned in the making to another of an offer to supply a controlled drug - Anabolic Steroid
- Supply Class C drug -Anabolic Steroids
- Offer to supply Class C drug - Anabolic Steroid
- Supply hydroxy-n-butric acid (GHB)
- Offer to supply hydroxy-n-butric acid
- Concerned in supply of hydroxy-n-butric acid (GHB)
- Concerned in offer to supply hydroxy-n-butric acid (GHB)
- Supplying a controlled drug - Class C
- Offer to supply a controlled drug - Class C
- Being concerned in supplying a controlled drug - Class C
- Being concerned in offer to supply a controlled drug - Class C
- Being concerned in supplying a controlled drug - Class C Anabolic Steroids
- Being concerned in offer to supply a controlled drug - Class C - Anabolic Steroids
- Supply controlled drug - Class C - Anabolic Steroids
- Offer to supply controlled drug - Class C - Anabolic Steroid
- Supply hydroxy-n-butric acid
- Offer to supply hydroxy-n-butric acid (GHB)
- Concerned in supply of hydroxy-n-butric acid (GHB)
- Concerned in offer to supply hydroxy-n-butric acid (GHB)
- Being concerned in making of an offer to supply to another Cannabis resin a Class C drug
- Offer to supply Cannabis resin a Class C drug
- Being concerned in the making of an offer to supply to another Cannabis a Class C controlled drug
- Concerned in the supply of Cannabis resin a Class C controlled drug
- Possessing controlled drug
- Possessing controlled drug - Class A
- Possessing controlled drug - Class A - Cocaine
- Possessing controlled drug - Class A - Heroin
- Possessing controlled drug - Class A - LSD
- Possessing controlled drug - Class A - MDMA
- Possessing controlled drug - Class A other

- Possessing controlled drug - Class B
- Possessing controlled drug - Class B - Amphetamine
- Possessing controlled drug - Class B - Cannabis
- Possessing controlled drug - Class B - other
- Possessing controlled drug - Class C
- Possessing controlled drug - class not specified
- Possession of a Class A drug - Methadone
- Possession of a Class B drug - Cannabis resin
- Possess a controlled drug Class A.. Crack Cocaine
- Possession of a controlled drug -Anabolic Steroid
- Possess hydroxy-n-butric acid (GHB)
- Possess Cannabis resin a Class C controlled drug
- Possess Cannabis a Class C controlled drug
- Possessing controlled drug w/i to supply
- Possessing controlled drug w/i to supply - Class A
- Possessing controlled drug w/i to supply - Class A - Cocaine
- Possessing controlled drug w/i to supply - Class A- Heroin
- Possessing controlled drug w/i to supply - Class A- LSD
- Possessing controlled drug w/i to supply - Class A- MDMA
- Possessing controlled drug w/i to supply - Class A - other
- Possessing controlled drug w/i to supply - Class B
- Possessing controlled drug w/i to supply - Class B - Amphetamine
- Possessing controlled drug w/i to supply - Class B Cannabis
- Possessing controlled drug w/i to supply - Class B - other
- Possessing controlled drug w/i to supply - Class C
- Possess a controlled drug w/i to supply - Class B Cannabis resin
- Possess a controlled drug - w/i to supply - Class A - Methadone
- Possess a controlled drug - w/i to supply - Class A - Crack Cocaine
- Possession of a controlled drug with intent to supply - Anabolic Steroid
- Possess with intent to supply hydroxy-n-butric acid (GHB)
- Possess a controlled drug with intent to supply Class C - Anabolic Steroids
- Possess a controlled drug with intent to supply - Class C
- Possess with intent to supply - hydroxy-n-butyric acid (GHB)
- Possess with intent to supply - Cannabis a Class C controlled drug
- Possession of dangerous drug
- Procure dangerous drugs
- Supply dangerous drugs
- Conspiracy - outside the UK - drugs
- Conspiracy to commit a triable either way offence outside the UK - drugs
- Causing death by reckless driving
- Causing death by dangerous driving
- Causing death by careless or inconsiderate driving when unfit through drink or drugs
- Causing death by careless or inconsiderate driving when unfit through drink
- Causing death by careless or inconsiderate driving when unfit through drugs
- Causing death by careless or inconsiderate driving having consumed excess alcohol
- Causing death by careless or inconsiderate driving and fail to provide a specimen

- Causing death by reckless or dangerous driving
- Infanticide
- Procuring own abortion
- Procuring abortion of another
- Child destruction
- Concealment of birth
- Procuring means to cause abortion
- Procuring poison to procure miscarriage
- Procuring instrument to procure miscarriage
- Supplying means to cause abortion
- Supplying poison to procure miscarriage
- Supplying instrument to procure miscarriage
- Aiding and abetting suicide
- Aiding and abetting attempted suicide
- Racially aggravated common assault
- Racially aggravated assault by beating
- Religiously aggravated common assault
- Religiously aggravated assault by beating
- Racially or religiously aggravated common assault
- Racially or religiously aggravated assault by beating
- Attempt to choke, suffocate or strangle w/i to commit indictable offence
- Attempting to render insensible, unconscious or incapable of resistance w/i to commit indictable offence
- Using chloroform or other stupefying or overpowering drug or thing w/i to commit an indictable offence
- Using chloroform or other stupefying or overpowering drug or thing to commit indictable offence
- Using chloroform or other stupefying or overpowering drug or thing to assist in committing indictable offence
- Administering poison so as to inflict grievous bodily harm
- Causing poison to be taken so as to inflict grievous bodily harm
- Administering noxious thing so as to inflict grievous bodily harm
- Causing noxious thing to be taken so as to inflict grievous bodily harm
- Causing poison to be administered so as to inflict grievous bodily harm
- Causing noxious thing to be administered so as to inflict grievous bodily harm
- Administering poison to aggrieve
- Administering poison with intent
- Causing poison to be taken with intent
- Causing poison to be administered with intent
- Administering noxious thing with intent
- Causing noxious thing to be taken with intent
- Causing noxious thing to be administered with intent
- Wounding w/i
- Wounding with intent to do grievous bodily harm
- Wounding with intent to resist or prevent lawful apprehension
- Grievous bodily harm w/i
- Causing grievous bodily harm with intent to do grievous bodily harm
- Causing grievous bodily harm with intent to resist or prevent lawful apprehension
- Wounding
- Wounding/inflicting grievous bodily harm
- Grievous bodily harm
- Setting traps w/i to cause grievous bodily harm
- Using corrosives w/i to cause grievous bodily harm

- Throwing corrosive fluid with intent
- Applying corrosive fluid with intent
- Throwing destructive or explosive substance w/i to do grievous bodily harm
- Applying destructive or explosive substance w/i to do grievous bodily harm
- Placing corrosive fluid with intent to do grievous bodily harm
- Administering a drug with intent to commit an indictable offence
- Administering poison or destructive or noxious thing with intent to injure aggrieve or annoy
- Assaulting prisoner custody officer (in pursuance of prisoner escort), whilst possessing firearm
- Assaulting prisoner custody officer (on duty at contracted-out prison), whilst possessing firearm
- Assaulting prisoner custody officer (in pursuance of prisoner escort), whilst possessing imitation firearm
- Assaulting prisoner custody officer (on duty at contracted-out prison), whilst possessing imitation firearm
- Assaulting prisoner custody officer (in pursuance of prisoner escort), whilst possessing shotgun
- Assaulting prisoner custody officer (on duty at contracted-out prison), whilst possessing shotgun
- Assaulting prisoner custody officer (in pursuance of prisoner escort), whilst possessing imitation shotgun
- Assaulting prisoner custody officer (on duty at contracted-out prison), whilst possessing imitation shotgun
- Assaulting prisoner custody officer (in pursuance of prisoner escort), whilst possessing air weapon
- Assaulting prisoner custody officer (on duty at contracted-out prison), whilst possessing air weapon
- Assaulting prisoner custody officer (in pursuance of prisoner escort), whilst possessing imitation air weapon
- Assaulting prison custody officer (on duty at contracted-out prison), whilst possessing imitation air weapon
- Racially aggravated wounding/grievous bodily harm
- Racially aggravated assault/ASH
- Religiously aggravated malicious wounding or GBH (s. 20)
- Religiously aggravated assault occasioning actual bodily harm
- Racially or religiously aggravated malicious wounding or GBH (s. 20)
- Racially or religiously aggravated assault causing actual bodily harm
- Threats to kill
- False imprisonment
- Child stealing
- Receiving stolen child
- Harboursing stolen child
- Taking a child out of the United Kingdom without the appropriate consent
- Sending a child out of the United Kingdom without the appropriate consent
- Taking a child without lawful authority so as to remove him/her from lawful control
- Detaining a child without lawful authority so as to remove him/her from lawful control
- Taking a child without lawful authority so as to keep him/her from lawful control
- Detaining a child without lawful authority so as to keep him/her from lawful control
- Taking a child from a responsible person
- Keeping a child from a responsible person
- Inducing, assisting, or inciting child to run away from responsible person
- Inducing child to run away or stay away from responsible person
- Assisting child to run away or stay

- away from responsible person
- Inciting child to run away or stay away from responsible person
- Knowingly compel persuade incite or assist a child to be absent from a place of safety
- Assist/induce a child or young person to run away from care
- Harbour/conceal runaway from care
- Assist or induce a child or young person to run away from care
- Harbour or conceal a child or young person who has absconded from care or prevent them returning to care
- Take up/remove/display rail/sleeper/thing with intent to obstruct railway
- Turn/move/divert points/machinery with intent to obstruct railway
- Make/show light/signal on railway with intent to obstruct
- Hide/remove light/signal on railway with intent to obstruct
- Unlawful act with intent to obstruct the railway
- Caused unlawful act with intent to obstruct railway
- Cause to obstruct railway engine/ carriage by act/omission
- Obstruct railway engine /carriage by act/omission
- Put/throw stone/wood/thing on railway with intent to obstruct
- Abandoning child under 2
- Wilfully abandoning child under 16
- Wilfully abandoning young person under 16
- Wilfully abandoning child under 14
- Causing young person under 16 to be abandoned
- Causing child under 14 to be abandoned
- Wilfully abandoning/exposing a child or young person
- Causing/permitting child or young person to be abandoned/exposed
- Committing act of cruelty to young person under 16
- Wilfully assaulting young person under 16
- Wilfully assaulting child under 14
- Wilfully ill-treating young person under 16
- Wilfully ill-treating child under 14
- Wilfully neglecting young person under 16
- Wilfully neglecting child under 14
- Wilfully exposing young person under 16
- Wilfully exposing child under 14
- Causing young person under 16 to be assaulted
- Causing child under 14 to be assaulted
- Causing young person under 16 to be ill-treated
- Causing child under 14 to be ill-treated
- Causing young person under 16 to be neglected
- Causing child under 13 to be neglected
- Cause young person under 16 to be exposed
- Cause child under 14 to be exposed
- Doing an act of cruelty to a child or young person under 16 years
- Causing or procuring an act of cruelty to a child or young person
- Exposing child under 12 to risk of burning
- Refuse and neglect to maintain child
- Failing to provide for safety of children at entertainment
- Cause permit child or young person to be assaulted ill treated neglected
- Wilfully assaulting/ill-treating/neglecting child or young person
- Hospital staff ill-treating mental patient

- Hospital staff wilfully neglecting mental patient
- Guardian ill-treating mental patient
- Guardian wilfully neglecting mental patient
- Circumcision of a female
- Aiding and abetting circumcision of a female
- Counselling female to be circumcised
- Procuring circumcision of a female
- Excise infibulate or otherwise mutilate the whole or any part of labia majora labia minora or clitoris
- Aid/abet/counsel/procure girl excise infibulate mutilate whole/part labia majora labia minora or clitoris
- Aid abet counsel procure non UK person who is not UK resident to do act of female genital mutilation o/s UK
- Disqualified person being concerned or having financial interest
- Employing a disqualified person in a children's home
- Disqualified person fostering a child
- Accommodating a privately fostered child in contravention of a prohibition
- Involvement of disqualified person in child minding
- Person disqualified from working with children apply for/offer/accept or do any work in regulated position
- Parson offer/procure work in regulated position for another - disqualified from working with children
- Fail to remove disqualified person from working with children
- Publish advertisement indicating you were to be the parent of a child which you desired to be adopted
- Made arrangements for the adoption of a child when you were not an adoption agency
- Remove a child placed for adoption by adoption agency under S. 19 From prospective adopters
- Remove child under six weeks placed for adoption by agency/placed without authority from prospective adopter
- Without leave of court/authority remove child not yet placed for adoption from local authority accommodation
- Remove child not yet placed for adoption from accommodation provided by adoption agency
- Prospective adopter fail to return child not placed within 7 days of receipt of s. 34(1) Notice
- Prospective adopter fail return child placed for adoption/consent withdrawn w/i 14 days receipt s. 32 Notice
- Prospective adopter fail return child placed for adoption and placement refused by date determined by court
- Remove child from prospective adopter placement order in force
- Remove child from prospective adopter-placement order revoked child remains with adopter/local authority accommodation
- Prospective adopter fail return child to agency w/i 7 days of notice - agency of opinion child not to remain
- Fail to return child to parent or guardian on request made under ss.36 to 40
- Remove a child in contravention of s.36.provisions
- Bring/cause another to bring child resident o/s UK into UK for purpose of adoption by British resident
- Bring/cause to bring into UK a child adopted by British resident under external adoption within 6 months
- Remove from UK a child who is commonwealth citizen/resident of UK for purpose of adoption
- Person who is not adoption agency/ manager of adoption agency taking steps to arrange adoptions
- Preparation of suitability report of child for adoption/person to adopt child by unauthorised person

- Make prohibited payment re adoption/consent to adoption/removal from UK of a child
- Cause/allow death of child/vulnerable person
- Act as a child minder while disqualified from registration as a child minder
- Conspiracy - outside UK - assault
- Conspiracy to commit triable either way offence outside the UK - offence against the person
- Trafficking persons for purpose of exploitation
- Trafficking persons into UK for purpose of exploitation
- Trafficking persons within the UK for the purpose of exploitation
- Trafficking persons out of the UK for the purpose of exploitation
- Conspiracy - outside the UK immigration
- Conspiracy to commit triable either way offence outside the UK - immigration/aliens offences
- Shortening shotgun barrel
- Converting imitation firearm
- Carrying firearm and ammunition in public place
- Possess loaded/unloaded firearm with suitable ammunition in public place
- Carrying loaded shotgun in public place
- Trespassing with firearm in a building
- Trespassing with firearm in building
- Trespassing with imitation firearm in building
- Trespassing with shotgun in building
- Trespassing with air weapon in building
- Prohibited person possessing firearm
- Possessing firearm when prohibited (prison/young offenders' institution 3 years or more)
- Possessing firearm ammunition when prohibited (prison/young offenders' institution 3 years or more)
- Possessing imitation firearm when prohibited (prison/young offenders' institution 3 years or more)
- Possessing shotgun when prohibited (prison/young offenders' institution 3 years or more)
- Possessing shotgun ammunition when prohibited (prison/young offenders' institution 3 years or more)
- Possessing air weapon when prohibited (prison/young offenders' institution 3 years or more)
- Possessing air weapon ammunition when prohibited (prison/young offenders' institution 3 years or more)
- Possessing firearm when prohibited (prison/young offenders' institution for between 3 months and 3yrs)
- Possess firearm ammunition when prohibited (previously detained in prison /YOI for between 3 mths and 3 yrs)
- Possess imitation firearm when prohibited (previously detained in prison/YOI for between 3 mths and 3 yrs)
- Possess shotgun when prohibited (previously detained in prison/YOI for between 3 mths and 3yrs)
- Possess shotgun ammunition when prohibited (previously detained in prison/YOI for between 3 mths and 3 yrs)
- Possess air weapon when prohibited (previously detained in prison/YOI for between 3 mths and 3 yrs)
- Possess air weapon ammunition when prohibited (previously detained in prison/YOI between 3 mths and 3 yrs)
- Possess imitation firearm in a public place
- Possessing firearm without certificate
- Possessing converted firearm without certificate

- Possess shortened shotgun without certificate
- Trespassing with firearm on land
- Trespassing with imitation firearm on land
- Trespassing with shotgun on land
- Trespassing with air weapon on land
- Person under 17 acquiring firearm
- Person under 17 purchasing firearm
- Person under 17 hiring firearm
- Person under 17 purchasing shotgun
- Person under 17 hiring shotgun
- Person under 17 purchasing air weapon
- Person under 17 hiring air weapon
- Person under 17 acquiring ammunition
- Person under 17 purchasing firearm ammunition
- Person under 17 hiring firearm ammunition
- Person under 17 purchasing shotgun ammunition
- Person under 17 hiring shotgun ammunition
- Person under 17 purchasing air weapon ammunition
- Person under 17 hiring air weapon ammunition
- Person under 17 acquiring firearm ammunition
- Person under 14 unlawfully possessing firearm
- Person under 14 unlawfully possessing ammunition
- Failing to hand firearm to constable
- Failing to hand shotgun to constable
- Failing to hand air weapon to constable
- Failing to hand firearm ammunition to constable
- Failing to hand shotgun ammunition to constable
- Failing to hand air weapon ammunition to constable
- Discharging firearm in street to annoyance of residents
- Drunk in charge of a loaded firearm
- Purchasing or acquiring firearm without certificate
- Purchasing or acquiring converted firearm without certificate
- Purchasing or acquiring shortened shotgun without certificate
- Purchasing or acquiring ammunition without certificate
- Purchasing or acquiring shotgun without certificate
- Possess/acquire/manufacture/sell/rifle
- Possess rifle
- Purchase/acquire rifle
- Manufacture rifle
- Sell/transfer rifle
- Possess self loading/pump action rifle
- Purchase/acquire pump action/self load rifle
- Manufacture pump action/self load rifle
- Sell/transfer pump action/self loading rifle
- Possess/acquire/manufacture/sell handgun/small firearm
- Possess small firearm
- Purchase/acquire small firearm
- Manufacture small firearm
- Sell/transfer small firearm
- Possess a handgun - prohibited weapon
- Purchase /acquire a handgun - prohibited weapon
- Manufacture a handgun - prohibited weapon
- Sell/transfer a small firearm
- Possess/acquire/manufacture/sell smooth-bore gun



- Possess smooth-bore gun
- Purchase/acquire smooth-bore gun
- Manufacture smooth-bore gun
- Sell/transfer smooth-bore gun
- Possess self loading/pump action smooth bore gun
- Purchase/acquire self loading/pump action smooth-bore gun
- Manufacture self loading/pump action smooth-bore gun
- Sell/transfer self loading/pump action smooth-bore gun
- Possess a rocket or ammunition (not covered by s. 5(1)(c))
- Purchase or acquire a rocket or ammunition (not covered by s. 5(1)(c))
- Selling or transferring a rocket or ammunition (not covered by s. 5(1)(c))
- Trading in firearms/shotguns without being registered as dealer
- Trading in firearms without being registered as a dealer
- Trading in shotguns without being registered as dealer
- Selling or transferring firearm to person without a certificate
- Selling or transferring firearm unlawfully
- Selling or transferring ammunition unlawfully
- Selling or transferring shotgun unlawfully
- Repairing firearm/shotgun for person without certificate
- Repairing firearm for person without certificate
- Repairing shotgun for person without certificate
- Testing firearm/shotgun for person without certificate
- Testing firearm for person without certificate
- Testing shotgun for person without certificate
- Shortening the barrel of any smooth-bore gun.
- Manufacture/sell/transfer/repair/test - firearm etc - not registered dealer
- Manufacture/sell/transfer/repair/test - firearm - not registered dealer
- Manufacture/sell/transfer/repair/test - ammunition - not registered dealer
- Manufacture/sell/transfer/repair/test - shotgun - not registered dealer
- Sending noxious thing with intent to cause grievous bodily harm
- Delivering noxious thing with intent to do grievous bodily harm
- Causing noxious thing to be taken with intent to do grievous bodily harm
- Causing noxious thing to be received with intent to do grievous bodily harm
- Causing noxious thing to be taken or received with intent to do grievous bodily harm
- Sending or delivering noxious thing with intent to do grievous bodily harm
- Sending or delivering explosive substance with intent to do grievous bodily harm
- Acquire possess transfer prohibited object
- Participate in the acquisition of a prohibited object
- Possess a prohibited object
- Participate in the transfer of a prohibited object
- Assist encourage or induce another person to use an anti-personnel mine
- Assist encourage or induce another person to participate in the acquisition of a prohibited object
- Assist encourage or induce another person to participate in the transfer of a prohibited object
- Armed with offensive weapon w/i to commit arrestable offence
- Possess article with blade/sharp point on school premises.
- Possess offensive weapon on school premises.

- Sending dangerous item in post
- Sending or attempting to send messages likely to prejudice safety of life
- Sending messages likely to prejudice safety of life or life services
- Attempting to send misleading message likely to prejudice safety of life or life services
- Attempt to send false misleading wireless message - general
- Racially aggravated intentional harassment alarm distress
- Racially threatening abusive insulting words behaviour/disorderly behaviour cause harassment/alarm/distress
- Display racially threatening/abusive/insulting writing/sign causing harassment/alarm/ distress
- Racially aggravated harassment alarm or distress
- Use racially threatening/abusive/insulting words behaviour likely to cause harassment/ alarm/distress
- Display racially threatening/abusive/insulting writing/sign likely to cause harassment/ alarm/distress
- Pursue a course of conduct which amounts to racially aggravated harassment
- Racially aggravated harassment - put in fear of violence
- Religiously aggravated fear or provocation of violence
- Religiously aggravated fear or provocation of violence words
- Religiously aggravated fear or provocation of violence -writing
- Religiously aggravated intentional harassment alarm or distress
- Religiously aggravated intentional harassment alarm or distress - words
- Religiously aggravated intentional harassment alarm or distress - writing
- Religiously aggravated harassment alarm or distress
- Religiously aggravated harassment
- alarm or distress - words
- Religiously aggravated harassment alarm or distress - writing
- Religiously aggravated offence of harassment - non violent
- Religiously aggravated offence of harassment - put people in fear of violence
- Racially or religiously aggravated fear or provocation of violence
- Racially or religiously aggravated fear or provocation of violence - words
- Racially or religiously aggravated fear or provocation of violence - writing
- Racially or religiously aggravated intentional harassment alarm or distress
- Racially or religiously aggravated intentional harassment alarm or distress - words
- Racially or religiously aggravated intentional harassment alarm or distress - writing
- Racially or religiously aggravated harassment alarm or distress
- Racially or religiously aggravated harassment alarm or distress - words
- Racially or religiously aggravated harassment alarm or distress - writing
- Racially or religiously aggravated offence of harassment - non violent
- Racially or religiously aggravated offence of harassment - put people in fear of violence
- Contaminating or interfering with goods w/i to cause alarm, anxiety, injury or loss
- Contaminating or interfering with goods with intent to cause public alarm and anxiety
- Contaminating or interfering with goods with intent to cause injury
- Contaminate/interfere with goods w/i to cause alarm/anxiety/injury or loss being shunned by the public
- Contaminate/interfere with goods w/i to cause loss through steps taken to

- avoid alarm/injury/anxiety/loss
- Contaminate/interfere with goods w/i to cause alarm/anxiety/injury/loss by goods being shunned or avoided
  - Making it appear goods have been contaminated or interfered with w/i to cause alarm, anxiety, injury or loss
  - Making it appear that goods have been contaminated or interfered with, intending to cause alarm and anxiety
  - Making it appear that goods have been contaminated or interfered with, with intent to cause injury
  - Make appear goods have been contaminated/interfered w/i to cause loss through goods being shunned by public
  - False contamination/interference of goods w/i to cause loss through steps to avoid alarm/anxiety/injury/loss
  - Make appear goods contaminated w/i to cause alarm/anxiety/injury/loss-goods being shunned or avoided
  - Placing goods which have been contaminated or interfered with w/i to cause alarm, anxiety, injury or loss
  - Placing goods which have been contaminated or interfered with, with intent to cause public alarm and anxiety
  - Placing goods which have been contaminated or interfered with, with intent to cause injury
  - Placing goods which have been contaminated or interfered with, with intent to cause economic loss
  - Place contaminated/interfered goods w/i to cause alarm/anxiety/injury/loss by goods being shunned or avoided
  - Placing goods which appear contaminated or interfered with w/i to cause alarm, anxiety, injury or loss
  - Placing goods which appear contaminated or interfered with, with intent to cause public alarm and anxiety
  - Placing goods which appear
- contaminated or interfered with, with intent to cause injury
  - Placing goods which appear contaminated or interfered with, with intent to cause economic loss
  - Placing contaminated/interfered goods w/i to cause loss through steps to avoid alarm/anxiety/injury or loss
  - Threatening to contaminate or interfere with goods w/i to cause alarm, anxiety or loss
  - Threatening to make goods appear contaminated or interfered with w/i to cause alarm, anxiety or loss
  - Threatening to place goods contaminated or interfered with w/i to cause alarm, anxiety or loss
  - Threatening to place goods which appear contaminated or interfered with w/i to cause alarm, anxiety or loss
  - Claiming to have contaminated or interfered with goods w/i to cause alarm, anxiety or loss
  - Claiming to have made goods appear contaminated or interfered with w/i to cause alarm, anxiety or loss
  - Claiming to have placed goods contaminated or interfered with w/i to cause alarm, anxiety or loss
  - Claiming to have placed goods appearing contaminated or interfered with w/i to cause alarm, anxiety or loss
  - Possessing articles to contaminate or interfere with goods w/i to cause alarm, anxiety, injury or loss
  - Possessing articles to make goods appear contaminated w/i to cause alarm, anxiety, injury or loss
  - Possessing articles to place goods contaminated w/i to cause alarm, anxiety, injury or loss
  - Possessing articles to place goods which appear contaminated w/i to cause alarm, anxiety, injury or loss
  - Non licensed creation, use or possession of embryo

- Creating embryo without a licence
- Keeping embryo without a licence
- Using embryo without a licence
- Placing non human embryo or gametes in a woman
- Placing non human embryo in a woman
- Placing gametes in a woman
- Misuse of human embryo
- Non licensed use of gametes
- Use sperm in course of treating a woman services not provided for said woman and man together without licence
- Use eggs of one woman without licence in the course of treating another woman
- Mixing live human gametes with live gametes of another animal without licence
- Fail to comply with directions for transfer of items or information held for human fertilisation
- False or misleading information to obtain a licence in connection with human fertilisation and embryology
- Disclosure of confidential information relating to human fertilisation or embryology
- Fail to comply with requirement of the human fertilisation and embryology authority
- Use cells from embryo or foetus to provide fertility service for any woman
- Restriction on transplants between persons not genetically related
- Remove from living person organ to transplant into another person - donor and donor not genetically related
- Transplant organ removed from living person into another person - donor and donor not genetically related
- Prohibition of commercial dealings in human organs
- Make/receive payment for supply or offer to supply organ removed from dead/living person to be transplanted
- Seek to find person willing to supply for payment such an organ as mentioned in s. 1(a)
- Initiate/negotiate any arrangement involving the making of any payment for the supply or offer of any organ
- Take part in management/control of body of persons whose activities include negotiation of such arrangements
- Without appropriate consent did a s.1 activity in relation to a human organ/tissue
- Falsely represent that consent given did not apply re s. 1 activity in relation to a human organ/tissue
- Did an activity in relation to a human organ/tissue to which s. 1(2) applies without a signed cause of death
- Supply of human material for transplantation
- Give/receive a reward for supply/offer to supply human material for transplantation
- Seek to find a person willing to supply human material for transplantation
- Offer to supply human material for transplantation
- Initiate/negotiate any arrangement re giving of reward for supply of human material for transplantation
- Participate in control of body activity initiate giving of reward for supply human material for transplant
- Cause to be published/distributed advert inviting supply/offer to supply human material for transplantation
- Cause to publish/distribute advert indicating willingness to initiate supply of human material for transplant
- Fail to comply with requirement to produce records/allow entry/inspection/search of premises
- Obstruct exercise of right under sch. 5
- Breach of licence requirement contravention of s.16(1)

- Possess anatomical specimens away from licensed premises
- Possess former anatomical specimens away from licensed premises
- Restriction on transplants involving a living donor
- Non-consensual analysis of DNA
- Gross indecency
- Gross indecency (by male 21 or over with male under 21)
- Gross indecency (by male with male other than offence classification sx56021)
- Gross indecency being party to or procuring/attempting to procure offence
- Gross indecency by male 21 or over with male under 18
- Gross indecency in public place by males over 18 with male over 18
- Gross indecency between male aged between 18 and 20 with man under 18
- Man over 21 to or procure gross indecency between men one under 18
- Being party to or procuring offence of indecency between men in public
- Man of 18 to 20 party to/procure indecency between men (one under 18)
- Indecency between man over 21 and man under 16
- Indecency between man aged 16 to 20 and man under 16
- Man over 21 party to) procuring indecency between men (one under 16)
- Man aged 16 to 20 party/ to procuring indecency between men (one under 16)
- Gross indecency or indecency by a male aged 16 or over with another male over 16
- Party to/procuring commission of act of gross indecency with another man in public (both over 16)
- Indecency between man aged 16 to 17 with man under 16
- Man aged 16 to 17 party to/procuring indecency between men (one under 16)
- Gross indecency or indecency by a male aged under 16 (offender) with another male over 16 (victim)
- Procuring man to commit homosexual act
- Commit act of gross indecency
- Incitement to commit the act of buggery outside the United Kingdom
- Conspiracy to commit an act of buggery outside the United Kingdom
- Buggery (with animal)
- Female person allows/causes intercourse with an animal
- Male person perform intercourse with an animal
- Male person allow/cause intercourse by an animal on him
- Permitting defective to use premises for intercourse
- Unlawful carnal knowledge
- Procuring woman who is defective
- Procuring girl under 21
- Procuring woman by false pretences
- Procuring woman by threats
- Procuring woman to become prostitute outside United Kingdom
- Administering drugs to obtain intercourse
- Procuring a woman to become a common prostitute
- Procuring a woman to become a frequenter or inmate of a brothel abroad
- Procuring a woman to become a frequenter or inmate of a brothel for prostitution
- Abducting woman by force (for the sake of her property)
- Abducting woman by force (other than for the sake of her property)

- Indecent assault on female 16 or over
- Indecent assault on male 16 or over
- Indecent assault on female under 16
- Indecent assault on male under 16
- Indecent assault on female under 14
- Indecent assault on male under 14
- Encourage indecent assault on a girl under 16
- Incitement to indecently assault a girl outside the United Kingdom
- Incitement to indecently assault boy outside the United Kingdom
- Incitement to commit offence under s. 1 Indecency with Children Act 1960 indecent conduct toward young child
- Conspiracy to indecently assault a boy outside the United Kingdom
- Conspiracy to indecently assault a girl outside the United Kingdom
- Engaged in sexual activity other than sexual intercourse with a person under 18 when in a position of trust
- Indecent assault - age not specified
- Indecent assault on a female - age not specified
- Indecent assault on male - age not specified
- Sexual assault - no penetration
- Sexual assault -intentionally touch female - no penetration
- Sexual assault- intentionally touch male - no penetration
- Engage in sexual activity without consent - no penetration
- Cause female to engage in sexual activity without consent - no penetration
- Cause male to engage in sexual activity without consent - no penetration
- Engage in sex act in presence of person with mental disorder-presence agreed by inducement/threat/deception
- Indecent exposure w/i to insult female
- Indecent exposure to the annoyance of residents
- Indecent exposure
- Committing act outraging public decency
- Commit an act outraging public decency by behaving in an indecent manner
- Allowing person between 4 and 16 to reside in brothel
- Man living on Immoral earnings of female prostitute
- Living on immoral earnings of male prostitute
- Woman exercising control over prostitute
- Tenant permitting premises to be used for prostitution
- Sexual exploitation (trafficking)
- Arrange/facilitate arrival into UK of person for sexual exploitation (trafficking)
- Arrange/facilitate arrival within UK of person for sexual exploitation (trafficking)
- Arrange/facilitate the departure from the UK of a person for sexual exploitation (trafficking)
- Sex offender fail to notify name/address to police
- Sex offender fail to notify changed name/address to police
- Sex offender give false name/address to police
- Sex offender give false information to police
- Fail to allow police to take fingerprints and/or photographs
- Fail to notify movements before leaving United Kingdom
- Fail to notify police about return to Utd Kingdom
- Fail to comply with the prohibitions of a restraining order
- Fail to comply with initial notification

- requirement
- Fail to comply with notification order requirement
- Fail to comply with interim notification order requirement
- Fail to comply with notification of changes requirement
- Fail to comply with notification of an event requirement
- Fail to comply with periodic notification requirement
- Fail to comply with method of notification by not allowing taking of fingerprints and photograph
- Sexual offences - protected material
- Possess protected material (defendant)
- Disclose protected material by defendant
- Disclose protected material to another
- Disclose protected material to defendant
- Voyeurism
- Voyeurism - observe person doing a private act
- Voyeurism - operate equipment to enable another to observe a person doing a private act
- Voyeurism - record a person doing a private act
- Voyeurism - install equipment/construct/adapt structure w/i enabling one to record person doing private act
- Sexual activity in public lavatory
- Sexual activity in a public lavatory
- Commit an offence w/i to commit a sex offence
- Commit any offence other than by means of kidnap/false imprisonment w/i to commit relevant sexual offence
- Racially aggravated arson not endangering life
- Blocking railways w/i to obstruct
- Blocking railway with intent to obstruct - £20 or over damage
- Damaging railways w/i to obstruct
- Damaging railway with intent to obstruct - £20 or over damage
- Obstructing railways
- Obstructing engine or carriage on railway - £20 or over damage
- Exhibiting false signal to endanger shipping - £20 or over damage
- Removing buoys
- Master of ship doing any act likely to cause loss, damage or destruction to the ship or its equipment.
- Seaman on ship doing any act likely to cause loss, damage or destruction to the ship or its equipment.
- Seaman on ship doing any act likely to cause death or serious injury to a person on board.
- Master of ship omitting to preserve ship or its on board equipment from loss damage or destruction.
- Master of ship omitting to do anything required to preserve any person on board from death or injury.
- Seaman on ship omitting to preserve ship or its on board equipment from loss damage or destruction.
- Seaman on ship omitting to preserve any person on board from death or serious injury.
- Racially aggravated criminal damage
- Racially aggravated criminal damage - £5000 or less
- Religiously aggravated criminal damage
- Racially or religiously aggravated criminal damage
- Forgery
- Forging prescription for scheduled drug
- Forging document other than prescription for scheduled drug
- Copying false instrument
- Copying false instrument for

- prescription for scheduled drug
- Copying false instrument for other than prescription for scheduled drug
- Using false instrument
- Using false instrument for prescription for scheduled drug
- Using false instrument for other than prescription for scheduled drug
- Using copy of false instrument
- Using copy of false instrument for prescription for scheduled drug
- Using copy of false instrument for other than prescription for scheduled drug
- Possessing listed false instrument w/i to use
- Possessing listed false instrument
- Making forging equipment w/i to use
- Possessing forging equipment w/i to use
- Making forging equipment
- Possessing forging equipment
- Forgery of public books
- Forgery by bank clerk
- Falsifying court records
- Acknowledging recognizance in another's name
- Forgery of registrar's records
- Forgery of copies of registrar's records
- Court officer falsifying certificate of service of summons
- Forgery of documents under merchant shipping act
- Procuring forgery of documents under merchant shipping act
- Fraudulent alteration of documents under merchant shipping act
- Procuring fraudulent alteration of documents under merchant shipping act
- Forgery to document to obtain property of deceased seaman
- Procuring forgery of document to obtain property of deceased seaman
- Fraudulent alteration of document to obtain property of deceased seaman
- Procuring fraudulent alteration of document to obtain property of deceased seaman
- Using forged document to obtain property of deceased seaman
- Using fraudulently altered document to obtain property of deceased seaman
- Giving false evidence to obtain property of deceased seaman
- Giving false representation to obtain property of deceased seaman
- Procuring false evidence to obtain property of deceased seaman
- Procuring false representation to obtain property of deceased seaman
- Forgery of will
- Forgery of deeds
- Forgery of bonds
- Forgery of banknotes
- Forgery of valuable security
- Forgery of documents evidencing title (specify document)
- Forgery of official records (specify record)
- Forgery of any document (specify document)
- Forgery of public document (specify document)
- Forgery of official seals
- Forgery of official dies
- Obtaining goods by forged instrument
- Possessing forged banknote
- Possessing forged stamps
- Possessing forged dies
- Possessing forged Inland Revenue labels
- Making paper for forgery
- Using paper for forgery
- Possessing paper for forgery



- Making tools for forgery
- Using tools for forgery
- Possessing tools for forgery
- Purchasing treasury paper
- Possessing treasury paper
- Receiving treasury paper
- Forgery of passport
- Making document resembling banknote
- Using document resembling banknote
- Forgery of documents under mental health act
- Signing a false certificate to procure cremation
- Having document to which s. 126 of this act applies, knowing or believing it to be false
- Having document closely resembling document to which s. 126 of this act applies as to be calculated to deceive
- Making false entry in document under this act
- Making false statement in document under this act
- Endeavouring to obtain money/goods by forged instrument
- Demanding money/goods by virtue of forged instrument
- Counterfeiting or falsifying a document
- Knowingly accepting, receiving or using counterfeited or falsified document
- Alter document after it is officially issued
- Counterfeit seal. signature etc of officer or used by him/her to verify document or to secure goods
- Forging seal on recording equipment with intent to deceive
- Altering seal on recording equipment with intent to deceive
- Using seal on recording equipment with intent to deceive
- Altering record sheet with intent to deceive
- Making false entry on record sheet
- Forgery of a pedlars certificate
- Fraudulently printing stamp or making impression of stamp on material from genuine die
- Aid, abet or assist fraudulent printing of stamp or make impression of stamp on material from genuine die
- Procuring fraudulent printing of stamp or making of impression of stamp on material from genuine die
- Causing fraudulent printing of stamp or making of impression of stamp on material from genuine die
- Cutting, tearing or removing material from stamp with fraudulent intent
- Aiding, abetting or assisting the cutting, tearing or removal of material from stamp with fraudulent intent
- Procuring the cutting, tearing or removal of material from stamp with fraudulent intent
- Causing the cutting, tearing or removal of material from stamp with fraudulent intent
- Mutilating stamp with fraudulent intent
- Aiding, abetting or assisting mutilation of stamp with fraudulent intent
- Procuring mutilation of stamp with fraudulent intent
- Causing mutilation of stamp with fraudulent intent
- Fraudulently fixing or placing stamp or part of stamp which has been cut, torn or otherwise removed
- Aid, abet or assist fraudulent fixing or placing of stamp/part stamp which has been cut, torn or removed
- Procure fraudulent fixing or placing of stamp/part stamp which has been cut, torn or otherwise removed
- Causing fraudulent fixing or placing of stamp or part of stamp which has been cut, torn or otherwise removed

- Apparently/really removing or erasing item or detail from stamped material with fraudulent intent
- Aid, abet or assist in apparent/real removal or erasure of item or detail from stamped material
- Procuring apparent/real removal or erasure of item or detail from stamped material with fraudulent intent
- Causing apparent/real removal or erasure of item or detail from stamped material with fraudulent intent
- Selling stamp which has been fraudulently printed, or impressed from genuine die
- Aid, abet or assist sale of stamp which has been fraudulently printed, or impressed from genuine die
- Procuring sale of stamp which has been fraudulently printed, or impressed from genuine die
- Causing sale of stamp which has been fraudulently printed, or impressed from genuine die
- Exposing for sale stamp which has been fraudulently printed, or impressed from genuine die
- Aid, abet or assist exposure for sale of stamp which has been fraudulently printed or impressed
- Procuring exposure for sale of stamp which has been fraudulently printed, or impressed from genuine die
- Causing exposure for sale of stamp which has been fraudulently printed, or impressed from genuine die
- Uttering stamp which has been fraudulently printed, or impressed from genuine die
- Aiding, abetting or assisting utterance of stamp which has been fraudulently printed, or impressed
- Procuring utterance of stamp which has been fraudulently printed, or impressed from genuine die
- Causing utterance of stamp which has been fraudulently printed, or impressed from genuine die
- Using stamp which has been fraudulently printed, or impressed from genuine die
- Aiding, abetting or assisting use of stamp which has been fraudulently printed, or impressed
- Procuring use of stamp which has been fraudulently printed, or impressed from genuine die
- Causing use of stamp which has been fraudulently printed, or impressed from genuine die
- Possessing stamp or part of stamp, which has been fraudulently printed, impressed, cut, torn, or mutilated
- Aiding, abetting or assisting fraudulent possession of complete stamp or part of stamp.
- Procuring fraudulent possession of stamp or part of stamp
- Causing fraudulent possession of stamp or part of stamp
- Possess stamped material from which item or detail with fraudulent intent has apparently/really been removed
- Aid, abet or assist possession of stamped material from which item or detail has been removed
- Procuring possession of stamped material from which item or detail has been removed
- Causing possession of stamped material from which item or detail has been removed
- Making a false police act 1997 certificate
- Altering a false police act 1997 certificate
- Using a false police act 1997 certificate
- Allowing your police act 1997 certificate to be used
- Making a false statement to obtain a police act 1997 certificate
- Forge alter or use relevant document with intent to deceive

- Lending a relevant document to any other person with intent to deceive
- Allowing a relevant document to be used by other person with intent to deceive
- Making or possessing any document which closely resembles a relevant document with intent to deceive
- Make a false registration card
- Alter a registration card with intent to deceive or enable another to do so
- Make article designed to be used in making a false registration card
- Make article designed to be used in altering false registration card w/i to deceive or enable other to do so
- Possess article designed to be used in making/altering registration card w/i to deceive/ enable other to do so
- Possess an immigration stamp without reasonable cause
- Possess replica immigration stamp without reasonable cause
- Counterfeiting w/i to use
- Making counterfeit currency note with intent
- Making counterfeit coin with intent
- Counterfeiting
- Making counterfeit currency note
- Making counterfeit coin
- Tendering counterfeit currency
- Tendering counterfeit currency note
- Tendering counterfeit coin
- Passing counterfeit coin as genuine
- Passing counterfeit currency note as genuine.
- Delivering counterfeit currency to another w/i to use
- Delivering counterfeit currency note w/i
- Delivering counterfeit coin w/i
- Delivering counterfeit currency to another
- Delivering counterfeit currency note to another
- Delivering counterfeit coin to another
- Possessing counterfeit currency w/i to use
- Having counterfeit currency note with intent
- Having counterfeit coin with intent
- Possessing counterfeit currency
- Having counterfeit currency note
- Having counterfeit coin
- Making counterfeiting equipment w/i to use
- Making article for counterfeiting currency note w/i
- Making an article for counterfeiting coin w/i
- Possessing counterfeiting equipment w/i to use
- Having article for counterfeiting currency note w/i
- Having article for counterfeiting coin w/i
- Making equipment for counterfeiting currency notes
- Possessing equipment for counterfeiting currency notes
- Making equipment for counterfeiting coin
- Making counterfeit coins
- Buying counterfeit coins
- Selling counterfeit coins
- Importing counterfeit coins
- Exporting counterfeit coins
- Bigamy
- Knowingly acquire goods unlawfully removed from warehouse w/i to evade duty (controlled drug - Class A)
- Knowingly acquire goods unlawfully removed from ware house w/i to evade duty (controlled drug - Class B)
- Knowingly acquire goods unlawfully removed from warehouse w/i to evade duty (controlled drug - Class C)
- Knowingly acquire goods unlawfully

- removed from warehouse w/i to evade duty (controlled drug - unspecified)
- Knowingly acquire goods unlawfully removed from warehouse w/i to evade duty (other than cont. drug)
  - Knowingly acquire goods which are chargeable with duty which has not been paid (controlled drug - Class A)
  - Knowingly acquire goods which are chargeable with duty which has not been paid (controlled drug - Class B)
  - Knowingly acquire goods which are chargeable with duty which has not been paid (controlled drug - Class C)
  - Knowingly acquire goods which are chargeable with duty which has not been paid (controlled drug- unspecified)
  - Knowingly acquire goods which are chargeable with duty which has not been paid (other than controlled drug)
  - Knowingly acquire goods importation of which is prohibited or restricted (controlled drug – Class A)
  - Knowingly acquire goods importation of which is prohibited or restricted (controlled drug - Class B)
  - Knowingly acquire goods importation of which is prohibited or restricted (controlled drug - Class C)
  - Knowingly acquire goods importation of which is prohibited or restricted (controlled drug- class unspecified)
  - Knowingly acquire goods importation of which is prohibited or restricted (other than controlled drug)
  - Knowingly acquire goods exportation of which is prohibited or restricted (controlled drug - Class A)
  - Knowingly acquire goods exportation of which is prohibited or restricted -(controlled drug- - Class B)
  - Knowingly acquire goods exportation of which is prohibited or restricted (controlled drug -Class C)
  - Knowingly acquire goods exportation of which is prohibited or restricted (controlled drug class unspecified)
  - Knowingly acquire goods exportation of which is prohibited or restricted (other than controlled drug)
  - Be concerned in move/conceal goods-import of which is prohibited/ restricted/ duty due (cont. Drug - Class A)
  - Be concerned in move conceal goods-import of which is prohibited/ restricted/ duty due (cont. Drug - Class B)
  - Be concerned in move/conceal goods-import of which is prohibited/ restricted/ duty due (cont. Drug - Class C)
  - Be concerned in move/conceal goods-import of which is prohibited/ restricted/ duty due (drug - unspecified)
  - Be concerned in move/conceal goods-import of which is prohibited/ restricted/ duty due (other than cont. Drug)
  - Be concerned in move/conceal goods-export of which is prohibited/ restricted (controlled drug - Class A)
  - Be concerned in move/conceal goods-export of which is prohibited/ restricted (controlled drug - Class B)
  - Be concerned in move/conceal goods-export of which is prohibited/ restricted (controlled drug - Class C)
  - Be concerned in move/conceal goods-export of which is prohibited/ restricted (controlled drug - unspecified)
  - Be concerned in move/conceal goods-export of which is prohibited/ restricted (other than controlled drug)
  - Fraudulent evasion of chargeable duty or prohibition or restricted order
  - Being knowingly concerned in fraudulently evading duty chargeable on goods (controlled drug - Class A)
  - Being knowingly concerned in attempting to evade duty chargeable on goods (controlled drug - Class A)
  - Be knowingly concerned in fraudulently evading duty chargeable

- on goods (controlled drug - Class B)
- Be knowingly concerned in attempting to evade duty chargeable on goods (controlled drug - Class B)
- Be knowingly concerned in fraudulently evading duty chargeable on goods (controlled drug - Class C)
- Be knowingly concerned in attempting to evade duty chargeable on goods (controlled drug - Class C)
- Be knowingly concerned in fraudulently evading duty chargeable on goods (controlled drug - class unspecified)
- Be knowingly concerned in attempting to evade duty chargeable on goods (controlled drug - class unspecified)
- Be knowingly concerned in fraudulently evading duty chargeable on goods (other than controlled drug)
- Be knowingly concerned in attempting to evade duty chargeable on goods (other than controlled drug)
- Be knowingly concerned in fraudulently evading prohibition/restriction on import of cont. Drug Class A
- Be knowingly concerned in attempting to evade-prohibition/restriction on import of cont. Drug Class A
- Be knowingly concerned in fraudulently evading prohibition/restriction on import of cont. Drug Class B
- Be knowingly concerned in attempting to evade prohibition/restriction on import of cont. Drug Class B
- Be knowingly concerned in fraudulently evading prohibition/restriction on import of cont. Drug Class C
- Be knowingly concerned in attempting to evade prohibition/restriction on import of cont. Drug Class C
- Be knowingly concerned in fraudulently evade prohibition/restriction on import of cont. Drug class unspecified.
- Be knowingly concerned in attempt to evade prohibition/restriction on import of cont Drug class unspecified
- Be knowingly concerned in fraudulently evade prohibition/restriction on import of goods other than cont. Drug
- Be knowingly concerned in attempting to evade prohibition/restriction on import of goods other than cont. Drug
- Be knowingly concerned in fraudulently evading a provision of C&E acts 1979 cont. Drug Class A
- Be knowingly concerned in attempting to evade a provision of C&E acts 1979 cont. Drug Class A
- Be knowingly concerned in fraudulently evading a provision of C&E acts 1979 cont. Drug Class B
- Be knowingly concerned in attempting to evade a provision of C&E acts 1979 cant. Drug Class B
- Be knowingly concerned in fraudulently evading a provision of C&E acts 1979 cont. Drug Class C
- Be knowingly concerned in attempting to evade a provision of C&E acts 1979 cont. Drug Class C
- Be knowingly concerned in fraudulently evading a provision of C&E acts 1979 cont. Drug class unspecified
- Be knowingly concerned in attempting to evade a provision of C&E acts 1979 cont. Drug class unspecified
- Be knowingly concerned in fraudulently evading a provision of C&E acts 1979 other than cont. Drug
- Be knowingly concerned in attempting to evade provision of C&E acts 1979 other than cont. Drug
- Being concerned in evading prohibition/restriction on export of controlled drug - Class A
- Being concerned in evading prohibition/restriction on export of controlled drug - Class B
- Being concerned in evading prohibition/restriction on export of controlled drug - Class C

- Being concerned in evading prohibition/restriction on export of controlled drug class unspecified
- Being concerned in evading prohibition/restriction on export of goods - other than controlled drug
- Improperly importing goods under S50(1) (other than controlled drug)
- Improperly importing goods under S50(1) (controlled drug - class not specified)
- Improperly importing goods on which prohibition or restriction applies (controlled drug - class unspecified)
- Improperly importing goods under S50(fl (controlled drug - Class A)
- Improperly importing goods under S50(1) (controlled drug - Class B)
- Improperly importing goods under S50(1) (controlled drug - Class C)
- Improperly importing goods on which prohibition or restriction applies (controlled drug - Class A)
- Improperly importing goods on which prohibition or restriction applies (controlled drug -Class B)
- Improperly importing goods on which prohibition or restriction applies (controlled drug -Class C)
- Import prohibited weapon/ammunition with intent to evade prohibition/ restriction
- Improper importation of goods with intent to evade any prohibition or restriction (drug - other)
- Improper importation of goods with intent to evade any prohibition or restriction (Class A drug)
- Improper importation of goods with intent to evade any prohibition or restriction (Class B drug)
- Improper importation of goods with intent to evade any prohibition or restriction (Class C drug)
- Import/export fraudulent evasion of prohibition (drugs class other)
- Import drug with intent to evade any prohibition or restriction (class drug - other)
- Export drug with intent to evade any prohibition or restriction (class drug - other)
- Possession of drugs import/export prohibited/restricted- evasion of duty
- Possession of drugs the import of which is prohibited or restricted (class drug - other)
- Possession of drugs the export of which is prohibited or restricted (class drug – other)
- Possession of drugs the import of which is prohibited or restricted (Class A drug)
- Possession of drugs the export of which is prohibited or restricted (Class A drug)
- Possession of drugs the import of which is prohibited or restricted (Class B drug)
- Possession of drugs the export of ,which is prohibited or restricted (Class B drug)
- Possession of drugs the import of which is prohibited or restricted (Class C drug)
- Knowingly concerned in the evasion of a prohibition or restriction on the import of a Class A drug
- Knowingly concerned on the evasion of a prohibition or restriction on the import of a Class B drug
- Knowingly concerned in the evasion of a prohibition or restriction on the import of a Class C drug
- Causing computer to perform function with intent to secure unauthorised access
- Obtaining unauthorised access to computer material with intent to commit offence
- Obtaining unauthorised access to computer material to facilitate commission of offence
- Modifying computer material without authorisation
- Intentionally obstruct a person in

- execution of DPA warrant or fail to assist person executing warrant
- Conspiracy - outside the UK - fraud
- Conspiracy to commit triable either way offence outside the UK - fraud and kindred offences
- Burglary w/i to steal - dwelling
- Burglary w/i to steal - non-dwelling
- Burglary w/i to commit grievous bodily harm
- Burglary with intent to inflict GBH - in dwelling
- Burglary with intent to inflict GBH - other than in dwelling
- Burglary w/i to cause unlawful damage
- Burglary with intent to cause unlawful damage - in dwelling
- Burglary with intent to cause unlawful damage - other than in dwelling
- Burglary (with intent to commit offence triable only on indictment - in dwelling)
- Burglary (with intent to commit offence triable only on indictment - other than in dwelling)
- Burglary and theft - dwelling
- Burglary and theft - non-dwelling
- Burglary - inflicting grievous bodily harm
- Burglary (inflicting GBH - in dwelling)
- Burglary (inflicting GBH - other than in dwelling)
- Burglary - attempting to inflict grievous bodily harm
- Burglary (attempting to inflict GBH - in dwelling)
- Burglary (attempting to inflict GBH - other than in dwelling)
- Burglary (comprising commission of offence triable only on indictment - in dwelling)
- Burglary (comprising commission of offence triable only on indictment - other than in dwelling)
- Burglary (in dwelling where person within subjected to violence or threat of violence)
- Burglary in other than dwelling where person subjected to violence or threat of violence
- Sacrilege
- Burglary - dwelling house by night
- Housebreaking and stealing
- Schoolhouse breaking and stealing
- Shopbreaking and stealing
- Warehouse breaking and stealing
- Countinghouse breaking and stealing
- Office breaking and stealing
- Store breaking and stealing
- Garage breaking and stealing
- Pavilion breaking and stealing
- Factory breaking and stealing
- Workshop breaking and stealing
- Municipal building breaking and stealing
- Breaking and entering - other
- Sacrilege with intent
- Housebreaking with intent
- Schoolhouse breaking with intent
- Shop breaking with intent
- Warehouse breaking with intent
- Countinghouse breaking with intent
- Office breaking with intent
- Store breaking with intent
- Garage breaking with intent
- Pavilion breaking with intent
- Factory breaking with intent
- Workshop breaking with intent
- Municipal building breaking with intent
- Breaking and entering with intent - other
- Break out of dwelling house having committed any felony therein
- Trespass with intent to commit a relevant sexual offence

- Theft from person
- Theft from dwelling
- Theft by employee
- Handling
- Handling stolen goods (receiving)
- Handling stolen goods (undertaking to, or assisting in retention, removal, disposal or realisation)
- Handling stolen goods (arranging to receive)
- Receiving
- Aggravated vehicle taking
- Taking without consent vehicle which subsequently causes death of person
- Aggravated vehicle taking (taking) driving dangerously on road or place
- Aggravated vehicle taking (taking) accident occurs causing injury
- Aggravated vehicle taking (taking) accident causing damage to vehicle property other than over £5000
- Aggravated vehicle taking (taking) accident cause damage to property other than vehicle under £5000
- Aggravated vehicle taking (taking) accident cause damage to vehicle over £5000
- Aggravated vehicle taking (taking) accident cause damage to vehicle under £5000
- Aggravated vehicle taking (taking) drove dangerously on road or place
- Aggravated vehicle taking (taking) accident cause damage to vehicle + property other than vehicle under 5000
- Aggravated vehicle taking - initial taker death caused by accident
- Drive stolen vehicle and subsequently cause death of person
- Money launder - disguise criminal property
- Money launder - conceal criminal property
- Money launder - convert criminal property
- Money launder - transfer criminal property
- Money launder remove criminal property
- Enter arrangement to facilitate acquisition retention use or control of criminal property
- Acquire criminal property
- Use criminal property
- Possess criminal property
- Money launder fail to disclose in regulated sector
- Money launder nominated person fail to disclose in regulated sector
- Money launder - other nominated person fail to disclose in regulated sector
- Money launder - tipping off
- Money launder - nominated officer consenting to prohibited act
- Proceeds of crime - prejudice investigation
- Conspiracy - outside the UK - theft
- Using crown die
- Using crown stamp
- Using crown seal —
- Possessing crown die
- Possessing crown stamp
- Possessing crown seal
- Counterfeiting crown die
- Counterfeiting crown stamp
- Counterfeiting crown seal
- Unlawful retention of official documents
- Allowing another possession of official documents
- Allowing another knowledge of official documents
- Selling official die
- Selling official stamp
- Selling official seal
- Possessing for sale official die



- Possessing for sale official stamp
- Possessing for sale official seal
- Rout
- Affray
- Unlawful assembly
- Violent disorder
- Inciting racial hatred
- Providing in a cable programme service material likely to stir up racial hatred
- Producing a programme for a cable programme service containing material likely to stir up racial hatred
- Using words in a programme for a cable programme service to likely stir up racial hatred
- Directing a programme for a cable programme service containing material likely to stir up racial hatred
- Using threatening, abusive, insulting words or behaviour to stir up racial hatred
- Displaying threatening, abusive, insulting written material to stir up racial hatred
- Publishing threatening, abusive, insulting written material to stir up racial hatred
- Distributing threatening, abusive, insulting written material to stir up racial hatred
- Presenting a play involving threatening, abusive, insulting words or behaviour to stir up racial hatred
- Directing a play involving threatening, abusive, insulting words or behaviour to stir up racial hatred.
- Distribution /recording of threatening, abusive, insulting visual images to stir up racial hatred
- Showing recording of threatening abusive, insulting visual images to stir up racial hatred
- Playing recording of threatening, abusive, insulting visual images to stir up racial hatred
- Distributing recording of threatening, abusive, insulting sounds to stir up racial hatred
- Showing recording of threatening, abusive, insulting sounds to stir up racial hatred
- Playing recording of threatening abusive, insulting sounds to stir up racial hatred
- Broadcasting programme likely to stir up racial hatred
- Producing programme for broadcast likely to stir up racial hatred
- Directing programme for broadcast likely to stir up racial hatred
- Using threatening, abusive, insulting words or behaviour in broadcast programme to stir up racial hatred
- Providing programme in cable programme service likely to stir up racial hatred
- Producing programme for cable programme service likely to stir up racial hatred
- Directing programme for cable programme service likely to stir up racial hatred
- Using threatening, abusive, insulting words or behaviour in cable programme service to stir up racial hatred
- Possessing material for display likely to stir up racial hatred
- Possessing material for publication likely to stir up racial hatred
- Possessing material for distribution likely to stir up racial hatred
- Possessing material for broadcast likely to stir up racial hatred
- Possessing material for inclusion in cable programme service likely to stir up racial hatred
- Possessing recording for distribution likely to stir up racial hatred
- Possessing recording for showing likely to stir up racial hatred
- Possessing recording for playing likely to stir up racial hatred

- Possessing recording for broadcast likely to stir up racial hatred
- Possessing recording for inclusion in cable programme service likely to stir up racial hatred
- Providing programme service including programme with intent or likely to stir up racial hatred
- Producing programme in programme service with intent or likely to stir up racial hatred
- Directing programme in programme service with intent or likely to stir up racial hatred
- Threatening/abusive/insulting words or behaviour in programme with intent or likely to stir up racial hatred
- Possessing material for inclusion in programme service with intent or likely to stir up racial hatred
- Possessing recording for inclusion in cable programme service with intent or likely to stir up racial hatred
- Show /play recording of threatening abusive/insulting sounds or images w/i or likely to stir up racial hatred
- Distribute recording of threatening/abusive/insulting sounds/images w/i or likely to stir up racial hatred
- Communicating false information causing bomb hoax
- Racially aggravated fear or provocation of violence
- Racially threatening abusive or insulting words or behaviour to cause fear or provocation of violence
- Perverting the course of justice
- Intimidating a witness or juror with intent to obstruct, pervert or interfere with justice
- Harming a witness or juror with intent to obstruct, pervert or interfere with justice
- Threaten to harm a witness or juror with intent to obstruct, pervert or interfere with justice
- Doing act tending and intended to pervert the course of public justice
- Doing series of acts tending and intended to pervert the course of public justice
- Obstructing the course of public justice
- Conspire to obstruct course of public justice
- Attempting to pervert the course of public justice
- Embracery
- Impeding apprehension
- Impeding apprehension of offender (in case of murder)
- Impeding apprehension of offender (for offence triable only on indictment)
- Impeding apprehension of offender (for offence triable either way)
- Impede prosecution of offender (case of murder)
- Impede prosecution of offender (offence triable on indictment only)
- Impede prosecution of offender (offence triable either way).
- Assisting an offender by acting with intent to impede his apprehension or prosecution
- Assisting an offender by impeding his apprehension or prosecution in a case of murder
- Assisting offender by impeding his apprehension or prosecution (original offence triable on indictment only)
- Assisting offender by impeding his apprehension or prosecution (original offence triable either way)
- Tendering false statement in evidence
- Furnishing false statement
- Perjury by witness
- Perjury by interpreter
- Aiding prisoner to escape
- Aiding prisoner to attempt to escape
- Conveying article to prisoner to facilitate escape
- Placing article outside prison to facilitate escape

- Sending article into prison or to prisoner to facilitate escape
- Harbours or assisting escaped prisoner
- Harbours an escaped prisoner
- Assisting an escaped prisoner
- Assisting escape from mental institution
- Harbours escaped patient from mental institution
- Assisting absence from mental institution
- Assisting child in care of local authority to run away
- Inducing child in care of local authority to run away
- Persistently attempting to induce a child in care of local authority to run away
- Taking away child in care of local authority
- Harbours child in care of local authority who has run or been taken away
- Concealing child in care of local authority who has run or been taken away
- Preventing child from returning to care of local authority
- Harbours child required to return to local authority care
- Concealing child required to return to local authority care
- Preventing return of child required to return to local authority care
- Compelling child to be absent from premises specified by care order
- Persuading child to be absent from premises specified by care order
- Inciting child to be absent from premises specified by care order
- Assisting child to be absent from premises specified by care order
- Participating in prison mutiny and failing to submit to lawful authority
- Conspiracy - outside the UK – police/courts
- Conspiracy to commit triable either way offence outside the UK - offences police related to courts and prison
- Cultivating Cannabis
- Permitting premises to be used for supply of drugs
- Permitting premises to be used for supplying controlled drug - Class A
- Permitting premises to be used for supplying controlled drug - Class A-Cocaine
- Permitting premises to be used for supplying controlled drug - Class A Heroin
- Permitting premises to be used for supplying controlled drug - Class A - LSD
- Permitting premises to be used for supplying controlled drug - Class A - MDMA
- Permitting premises to be used for supplying controlled drug - Class A - other
- Permitting premises to be used for supplying controlled drug - Class B
- Permitting premises to be used for supplying controlled drug - Class B - Amphetamine
- Permitting premises to be used for supplying controlled drug - Class B - Cannabis
- Permitting premises to be used for supplying controlled drug - Class B - other
- Permitting premises to be used for supplying controlled drug - Class C
- Permitting premises to be used for supplying controlled drug - class not specified
- Permitting premises to be used for attempting to supply controlled drug - Class A
- Permitting premises to be used for attempting to supply controlled drug - Class A -Cocaine
- Permitting premises to be used for attempting to supply controlled drug -

Class A - Heroin

- Permitting premises to be used for attempting to supply controlled drug - Class A - LW
- Permitting premises to be used for attempting to supply controlled drug - Class A - MDMA
- Permitting premises to be used for attempting to supply controlled drug - Class A - other
- Permitting premises to be used for attempting to supply controlled drug - Class B
- Permitting premises to be used for attempting to supply controlled drug - Class B - Amphetamine
- Permitting premises to be used for attempting to supply controlled drug - Class B - Cannabis
- Permitting premises to be used for attempting to supply controlled drug - Class B – other
- Permitting premises to be used for attempting to supply controlled drug - Class C
- Permitting premises to be used for attempting to supply controlled drug - class not specified
- Permit supply of controlled drug on premises - Class A - Crack Cocaine
- Permit supply of controlled drug on premises - Class A - Methadone
- Permit supply of controlled drug on premises - Class B - Cannabis resin
- Permit attempted supply of controlled drug on premises - Class A - Crack Cocaine
- Permit attempted supply of controlled drug on premises - Class A - Methadone
- Permit attempted supply of controlled drug on premises - Class B - Cannabis resin
- Permit supply of controlled drug on premises - Class B - Cannabis
- Permit supply of controlled drug on premises - other Class B
- Permit supply of controlled drug on premises - Class B —Amphetamine
- Permit supply of controlled drug on premises all Class C
- Permit supply of controlled drug on premises - Class A - LSD
- Permit supply of controlled drug on premises - class unspecified
- Permit supply of controlled drug on premises - other Class A
- Permit supply of controlled drug on premises - Class A MDMA
- Permit supply of controlled drug on premises - Class A - Heroin
- Permit supply of controlled drug on premises - Class A - Cocaine
- Permit supply of controlled drug on premises - Class C - Anabolic Steroids
- Permitting premises to be used for attempting to supply controlled drug – Anabolic Steroids
- Permitting premises to be used for supplying controlled drug - Anabolic Steroids
- Permit premises to be used for supply of hydroxy-n-butric acid (GHB)
- Permit supply of controlled drug on premises Class C Anabolic Steroids
- Permit supply of controlled drug on premises all Class C
- Permit premises to be used for supply of hydroxy-n-butyric acid (GHB)
- Permit use of premises for supply of Cannabis resin a Class C controlled drug
- Permit use of premises for offering to supply of Cannabis a Class Controlled drug
- Permit use of premises for attempt supply of Cannabis resin a Class C controlled drug
- Permit use of premises for attempt supply of Cannabis a Class C controlled drug
- Permitting premises to be used for use of drugs
- Permitting premises to be used for preparing opium for smoking

- Permitting premises to be used for smoking Cannabis
- Permitting premises to be used for smoking Cannabis resin
- Permitting premises to be used for smoking prepared opium
- Permit administering/use of drug on premises - Class A - Cocaine
- Permit administering/use of drug on premises - Class A - Heroin
- Permit administering/use of drug on premises - Class A - LSD
- Permit administering/use of drug on premises - Class A - MDMA
- Permit administering/use of drug on premises - Class A - Crack
- Permit administering/use of drug on premises - Class A - Methadone
- Permit administering/use of drug on premises - Class A - other
- Permit administering/use of drug on premises - Class B - Amphetamine
- Permit administering/use of drug on premises - Class B - Cannabis
- Permit administering/use of drug on premises - Class B - Cannabis resin
- Permit administering/use of drug on premises - Class B - other
- Permit administering/use of drug on premises - Class C Anabolic Steroids
- Permit administering/use of drug on premises - Class C - other
- Permit administering/use of drug on premises - class - unspecified
- Permit use of premises for smoking of Cannabis a Class C controlled drug
- Permit use of premises for smoking of Cannabis resin a Class C controlled drug
- Permit administering/use of drug on premises Class C Cannabis
- Permit administering/use of drug on premises Class C Cannabis resin
- Using opium
- Smoking prepared opium
- Using prepared opium
- Inducing commission of drug offence outside United Kingdom
- Assisting commission of drug offence outside untied kingdom
- Inducing commission of drug offence outside untied kingdom
- Permitting premises to be used for production of drugs
- Permitting premises to be used for producing controlled drug Class A
- Permitting premises to be used for producing controlled drug - Class A - Cocaine
- Permitting premises to be used for producing controlled drug - Class A - Heroin
- Permitting premises to be used for producing controlled drug - Class A - LSD
- Permitting premises to be used for producing controlled drug - Class A - MDMA
- Permitting premises to be used for producing controlled drug - Class A - other
- Permitting premises to be used for producing controlled drug - Class B
- Permitting premises to be used for producing controlled drug - Class B - Amphetamine
- Permitting premises to be used for producing controlled drug - Class B - Cannabis
- Permitting premises to be used for producing controlled drug - Class B - other
- Permitting premises to be used for producing controlled drug - Class C
- Permitting premises to be used for producing controlled drug - class not specified
- Permitting premises to be used for attempting to produce controlled drug - Class A
- Permitting premises to be used for attempting to produce controlled drug - Class A - Cocaine

- Permitting premises to be used for attempting to produce controlled drug - Class A - Heroin
- Permitting premises to be used for attempting to produce controlled-drug - Class A - LSD
- Permitting premises to be used for attempting to produce controlled drug - Class A - MDMA
- Permitting premises to be used for attempting to produce controlled drug - Class A - other
- Permitting premises to be used for attempting to produce controlled drug - Class B
- Permitting premises to be used for attempting to produce controlled drug - Class B - Amphetamine
- Permitting premises to be used for attempting to produce controlled drug - Class B - Cannabis
- Permitting premises to be used for attempting to produce controlled drug - Class B - other
- Permitting premises to be used for attempting to produce controlled drug - Class C
- Permitting premises to be used for attempting to produce controlled drug - class not specified
- Permit production of controlled drug on premises Class A Crack Cocaine
- Permit production of controlled drug on premises Class A - Methadone
- Permit production of controlled drug on premises - Class B - Cannabis resin
- Attempt to produce controlled drug on premises - Class A - Crack Cocaine
- Attempt to produce controlled drug on premises - Class A - Methadone
- Attempt to produce controlled drug on premises - Class B - Cannabis resin
- Permitting premises to be used for producing controlled drug - Anabolic Steroids
- Permitting premises to be used for attempting to produce controlled drug - anabolic steroid
- Permitting production or attempted production of controlled drug on premises - Class A - Cocaine
- Permitting production or attempted production of controlled drug on premises - Class A - Heroin
- Permitting production or attempted production of controlled drug on premises - Class A - LW
- Permitting production or attempted production of controlled drug on premises - Class A -MDMA
- Permitting production or attempted production of controlled drug on premises - Class A-Crack
- Permitting production or attempted production of controlled drug on premises - Class A - Methadone
- Permitting production or attempted production of controlled drug on premises – other Class A
- Permitting production or attempted production of controlled drug on premises - Class B - Amphetamine
- Permitting production or attempted production of controlled drug on premises - Class B - Cannabis
- Permitting production or attempted production of controlled drug on premises – other Class B
- Permitting production or attempted production of controlled drug on premises Class C - Anabolic Steroids
- Permitting production or attempted production of controlled drug on premises– all-Class C
- Permitting production or attempted production of controlled drug on premises – class unspecified
- Permitting production or attempted production of controlled drug on premises – cannabis resin
- Permit premises to be used for production of hydroxy-n-butric acid (GHB)
- Permit production or attempted production of controlled drug on

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- premises - Class C - Anabolic Steroids
- Permit production or attempted production of controlled drug - all Class C
  - Permit premises to be used for production of hydroxy-n-butyric acid (GHB)
  - Occupier/manager of premises permit production of Cannabis resin a Class C controlled drug
  - Occupier/manager of premises permit attempted production of Cannabis resin a Class C controlled drug
  - Assisting another to retain/use benefit of drug trafficking
  - Assisting another to retain benefit of drug trafficking
  - Assisting another to use benefit of drug trafficking
  - Making a disclosure likely to prejudice an investigation into drug trafficking
  - Supplying an article for use in administering a controlled drug
  - Offering to supply an article for use in administering a controlled drug
  - Supplying an article for use in preparing a controlled drug
  - Offering to supply an article for use in preparing a controlled drug
  - Manufacturing a scheduled substance
  - Supplying a scheduled substance to another person
  - Conceal or disguise own proceeds of drug trafficking
  - Convert transfer or remove from jurisdiction own proceeds of drug trafficking
  - Conceal or disguise another's proceeds of drug trafficking
  - Convert transfer or remove from jurisdiction another's proceeds of drug trafficking
  - Assist another to retain the proceeds of drug trafficking
  - Assist another to use the proceeds of drug trafficking
  - Acquire another's proceeds of drug trafficking
  - Use another's proceeds of drug trafficking
  - Possess another's proceeds of drug trafficking
  - Fail to disclose knowledge or suspicion of money laundering
  - Give tip-off likely to prejudice drug money laundering investigation
  - Give tip-off likely to prejudice drug money laundering investigation after disclosure made to constable
  - Give tip-off to prejudice drug money laundering investigation after disclosure made during employment
  - Prejudice drug trafficking investigation
  - Whilst on any ship had possession of a controlled drug
  - Whilst on any ship had possession of a controlled drug - Class A
  - Whilst on any ship had possession of a controlled drug - Class B
  - Whilst on any ship had possession of a controlled drug - Class C
  - Possession of unspecified class of controlled drug on board British ship
  - Knowingly whilst on any ship carried or concealed a controlled drug
  - Knowingly whilst on any ship carried or concealed a controlled drug - Class A
  - Knowingly whilst on any ship carried or concealed a controlled drug - Class B
  - Knowingly whilst on any ship carried or concealed a controlled drug - Class C
  - Knowingly concerned in carrying or concealing an unspecified class of drug on board British ship
  - Unlawful possession of drugs
  - Removing from jurisdiction own proceeds of drug trafficking
  - Removing from jurisdiction another's proceeds of drug trafficking
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- Concealing another's proceeds of drug trafficking
- Disguising another's proceeds of drug trafficking
- Converting another's proceeds of drug trafficking
- Transferring another's proceeds of drug trafficking
- Possess Cannabis resin with intent to supply a Class C controlled drug
- Occupier/manager premises permit production of Cannabis resin
- Occupier/manager premises permit production of Cannabis resin a Class C controlled drug
- Occupier/manager premises permit attempted production of Cannabis resin a Class C controlled drug
- Concerned in making offer to supply to another Cannabis resin a Class C controlled drug
- Being concerned in production by another of Cannabis resin a Class C controlled drug
- Produce Cannabis resin a Class C controlled drug
- Offer to supply Cannabis a Class C controlled drug
- Supply Cannabis resin a Class C controlled drug
- Offer to supply Cannabis resin a Class C controlled drug
- Possess with intent to supply Cannabis a Class C controlled drug
- Permit/suffer to take place production on premises of Cannabis a Class C controlled drug
- Attempt to permit/suffer to take place production on premises of Cannabis a Class C controlled drug
- Being concerned in making of offer to supply to another Cannabis a Class C controlled drug
- Being concerned in production by another of Cannabis a Class C controlled drug
- Produced Cannabis resin a Class C - controlled drug
- Produce Cannabis a Class C controlled drug
- Supply Cannabis a Class C controlled drug
- Being concerned in the supply of Cannabis a Class C controlled drug
- Being concerned in the supply of Cannabis resin a Class C controlled drug
- Permit use of premises for supply of Cannabis resin
- Permit use of premises for supply of Cannabis resin a Class C controlled drug
- Permit use of premises for attempt to supply Cannabis resin a Class C controlled drug
- Permit use of premises for offering to supply of Cannabis resin a Class C controlled drug
- Permit use of premises for smoking Cannabis/Cannabis resin
- Permit use of premises for smoking Cannabis a Class C controlled drug
- Permit use of premises for smoking Cannabis resin a Class C controlled drug
- Permit use of premises for supply of Cannabis
- Permit use of premises for supply of Cannabis a Class C controlled drug
- Permit use of premises for attempted supply of Cannabis a Class C controlled drug
- Permit use of premises for offering to supply Cannabis a Class C controlled drug
- Cultivate Cannabis plant a Class C controlled drug
- Being concerned in the production by another of Cannabis resin - a Class C - controlled drug
- Being concerned in production by another of Cannabis - a Class C - controlled drug
- Produce Cannabis - a Class C



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- controlled drug
  - Failing to comply with regulations for keeping controlled drugs
  - Breaching drug prohibition order
  - Practitioner contravening direction under s. 12(2) of this act concerning possession of Class A drug
  - Practitioner contravening direction under s. 12(2) of this act concerning possession of Class B drugs
  - Practitioner contravening direction under s. 12(2) of this act concerning possession Class C drug
  - Practitioner contravening direction under s. 12(2) of this act concerning possession class - not specified
  - Practitioner contravene direction under s. 12(2) Concerning possession of prescription of drug Class C
  - Practitioner contravene direction under s. 13 Concerning prescription of controlled drug - Class C
  - Breaching order prohibiting the prescribing of drugs
  - Practitioner contravening direction under s. 13(1) or 13(2) of this act Class A drug
  - Practitioner contravening direction under s. 13(1) or 13(2) of this act Class B drug
  - Practitioner contravening direction under s. 13(1) or 13(2) of this act Class C drug
  - Practitioner contravening direction under s. 13(1) or 13(2) of this act class not specified
  - Failing to comply with drug information notice
  - Making false return in respect of drug information notice
  - Failing to comply with regulations under the misuse of drugs act
  - Failing to comply with terms of drugs licence
  - Giving false information on drug return
  - Giving false information to obtain drug licence
  - Flying dangerously, causing loss of life
  - Flying dangerously in manner likely to cause loss of life
  - Attempted suicide
  - Common assault - adult
  - Common assault - aggravated
  - Common assault on child or young person
  - Indictable common assault
  - Assaulting court security officer
  - Assaulting a prison security officer (acting in pursuance of prisoner escort arrangements)
  - Assaulting a secure training unit custody officer whilst in the pursuance of his duties
  - Resist or deliberately obstruct secure training unit custody officer in the pursuance of his duties
  - Common assault
  - Battery
  - Assault occasioning actual bodily harm
  - Obstructing customs officer
  - Assaulting customs officer
  - Threatening to attack a united nations worker
  - Assault w/i to resist arrest
  - Causing bodily harm by furious driving
  - Causing bodily harm by wanton and furious driving
  - Causing bodily harm by wanton and furious racing
  - Causing bodily harm by wilful misconduct when driving
  - Causing bodily harm by wilful neglect when driving
  - Immigration - assaulted a detainee custody officer
  - Transport worker being unfit to carry out work through drink or drugs whilst on duty
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| <ul style="list-style-type: none"> <li>■ Transport worker having alcohol level above limit whilst on duty</li> <li>■ Operator of transport system being unfit to carry out work through drink or drugs whilst on duty</li> <li>■ Operator of transport system having alcohol level above limit whilst on duty</li> <li>■ Being employer of transport worker unfit to carry out work through drink or drugs whilst on duty</li> <li>■ Being employer of transport worker having alcohol level above limit whilst on duty</li> <li>■ Transport worker failing to provide specimen for analysis or for laboratory test</li> <li>■ Obstructing officer of railway company in execution of his/her duty</li> <li>■ Aid/assist in obstruction of officer of railway company in execution of his/her duty</li> <li>■ Misconduct on the railway</li> <li>■ Misconduct on the railway - obstruct engine</li> <li>■ Counsel/aid/assist misconduct on the railway - obstruct engine</li> <li>■ Transport worker fail to consent to analysis of blood specimen</li> <li>■ Fail to comply with requirement of an inspector of rail accidents</li> <li>■ Make statement for purpose of investigation into rail accident knowing it was</li> <li>■ inaccurate/misleading</li> <li>■ Provide information for the purpose of an investigation knowing/suspecting it was misleading</li> <li>■ Obstruct inspector of rail accidents in course of his conduct of an investigation</li> <li>■ Obstruct person accompanying inspector of rail accidents in course of his conduct of investigation</li> <li>■ Obstruct person exercising powers of inspector of rail accidents</li> <li>■ Manager/controller railway system fail</li> </ul> | <ul style="list-style-type: none"> <li>comply with SIO Direction conduct/enable other conduct investigation</li> <li>■ Provide railway services without entering into police service agreement respect of railway services/property</li> <li>■ Fail to comply with s. 60 summons to attend inquiry into police force and give</li> <li>■ evidence/produce documents</li> <li>■ Obstruct/fail to cooperate with enquiry into matter connected with police force</li> <li>■ Being drunk while in charge of child</li> <li>■ Neglect to maintain wife/children</li> <li>■ Fail to comply with regulations re identity of persons who have in for the UK must supply to the I.A.E.A.</li> <li>■ Wilfully obstruct an authorised officer in the exercise of power conferred by warrant under this section</li> <li>■ Fail to comply with request by authorised officer or constable to facilitate exercise of power by warrant</li> <li>■ Obstruct agency inspector or authorised officer in exercise of power under this section</li> <li>■ Fail to comply with request by agency inspector/authorised officer/constable to facilitate exercise of power</li> <li>■ Interfere with any thing placed on any land in exercise of a power under this section</li> <li>■ Obstruct authorised officer in the exercise of power conferred by warrant under this section</li> <li>■ Fail comply with authorised officer/constable to facilitate exercise of power conferred by warrant</li> <li>■ Giving false or misleading information for the purposes of this act</li> <li>■ Conducting an independent school which is not a registered or provisionally registered school</li> <li>■ Use of school premises for purposes for which they have been disqualified</li> <li>■ Act as proprietor of independent school accept/obtain such</li> </ul> |
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employment when disqualified

- Employment of child in contravention of prohibition or restriction imposed by local education authority
- Fail comply with notice to ascertain if child is employed so as to render him unfit to benefit from education
- Supply cigarette lighter refill canister to person under the age of 18
- Knowingly fail to cause regular attendance at school of registered pupil
- Breach of restriction on advertising child adoption
- Unauthorised disclosure of any information in the register of adoption and children
- Carry on manage establishment/ agency not registered
- Carry on manage establishment/ agency not registered - first offence - see legislation
- Carry on/manage establishment/ agency not registered - registration previously cancelled
- Carry on/manage establishment/ agency not registered - second offence
- Illegal entry to united kingdom
- Entering UK in breach of deportation order
- Entering UK without leave
- Obtain leave to enter UK by deception
- Seek to obtain leave to enter UK by deception
- Non-patrial overstaying leave
- Non-patrial breaching conditions of leave
- Non-patrial crew member overstaying leave
- Non-patrial failing to comply with requirements of medical officer of health
- Non-patrial failing to comply with residential instructions
- Failing to observe Immigration Act

restriction

- Non-patrial failing to comply with reporting instructions
- Failing to observe restriction as to reporting to police
- Failing to observe restriction as to reporting to immigration officer
- Failing to observe restriction as to employment or occupation
- Leaving ship after being placed there on to leave united kingdom
- Disembarking from ship or aircraft when being removed from UK
- Leaving aircraft after being placed there on to leave united kingdom
- Non-patrial embarking contrary to order in council
- Assisting illegal entry into united kingdom
- Assist illegal entry into UK by deception
- Harbours illegal entrant into united kingdom
- Harbours non-patrial with limited leave to enter and who remains in UK beyond time limit
- Harbours non-patrial who lawfully entered without Leave and who remains in UK beyond time limit
- Harbours non-patrial failing to observe conditions of leave
- Failing to submit to examination as required by schedule 2 of Immigration Act 1971
- Failing to submit to examination by immigration officer
- Failing to submit to examination by medical inspector
- Failing to produce information as required by schedule 2 of Immigration Act
- Fail to furnish or produce information or documents
- Refuse to furnish or produce information or documents
- Failing to produce documents as

- required by schedule 2 of Immigration Act
- Making false statement/return to person lawfully acting in execution of immigration act
- Making false statement or representation to immigration officer
- Making false representation to immigration officer
- Make false returns to person lawfully acting in execution of Immigration Act
- Causing false return statement or representation to be made
- Make false return statement or representation
- Possessing altered documents under the Immigration Act
- Altering documents under the Immigration Act
- Non-patrial failing to produce landing card
- Failing to complete and produce landing card
- Failing to complete and produce embarkation card
- Alien failing to notify change of residence/address
- Alien failing to notify change of residence
- Alien fail to notify address other than residence
- Alien fail to notify change of address
- Alien fail notify change of referee's address
- Alien failing to produce registration certificate
- Alien failing to produce registration certificate at police station
- Alien failing to register on entry
- Alien fail furnish information to registration officer
- Alien failing to report change of registration details
- Alien with no residence failing to report to referee
- Referee fail furnish information as to alien
- Alien failing to provide particulars to keeper of premises
- Failing to furnish information about number and place of issue of registration certificate
- Hotel keeper failing to obtain records of residents
- Hotel keeper failing to keep records of residents
- Hotel keeper failing to produce records of residents
- Obstructing immigration officer
- Alien causing sedition
- Alien causing disaffection
- Alien causing industrial unrest
- Alien holding pilotage certificate
- Employing alien as master of British ship
- Alien employed in civil service
- Captain of ship permitting scheduled person to disembark in united kingdom
- Captain of aircraft permitting scheduled person to disembark in united kingdom
- Owner allowing his ship to call at unscheduled port
- Owner allowing his aircraft to call at unscheduled port
- Agent allowing his ship to call at unscheduled port
- Agent allowing his aircraft to call at unscheduled port
- Owner of ship failing to supply landing cards
- Owner of ship failing to supply embarkation cards
- Owner of aircraft failing to supply landing cards
- Owner of aircraft failing to supply embarkation cards
- Agent of ship failing to supply landing cards

- Agent of ship failing to supply embarkation cards
- Agent of aircraft failing to supply landing cards
- Agent of aircraft failing to supply embarkation cards
- Owner of aircraft failing to remove scheduled person from united kingdom
- Agent of ship failing to remove scheduled person from united kingdom
- Agent of aircraft failing to remove scheduled person from united kingdom
- Owner of ship failing to comply with schedule 2 Immigration Act requirement in control area
- Owner of aircraft failing to comply with schedule 2 Immigration Act requirement in control area
- Agent of ship failing to comply with schedule 2 Immigration Act requirement in control area
- Agent of aircraft failing to comply with schedule 2 Immigration Act 1971 act requirement in control area
- Port manager failing to comply with schedule 2 Immigration Act requirement in control
- Alien fail to explain failure to produce passport/document
- Captain fail to take necessary steps in connection with disembarkation etc. of passengers
- Captain of ship fail to take necessary steps in connection with disembarkation etc. of passengers
- Captain of aircraft failing to take necessary steps in connection with disembarkation etc. of passengers
- Failing to comply with direction with respect to removal of person from UK
- Concessionaire fail arrange for removal of person
- Fail to observe schedule 2 Immigration Act
- Concessionaire fail to observe
- schedule 2 Immigration Act
- Captain of ship/aircraft fail to take necessary steps in connection with disembarkation of passengers
- Captain of ship/aircraft permitting person to disembark in UK when required to prevent it
- Owner or agent of ship or aircraft arranging for ship or aircraft to call at port other than port of entry
- Owner/agent of ship/aircraft concerned in arranging ship/aircraft to call at port other than port of entry
- Owner/agent of ship/aircraft failing to supply embarkation cards
- Owner/agent of ship/aircraft fail to supply landing cards
- Owner/agent of ship/aircraft failing to arrange for removal of person from UK when required to do so
- Owner/agent of ship/aircraft or port manager fail to take steps in relation to embarkation of passengers
- Owner/agent of ship/aircraft or port manager fail to take steps in relation to embarkation of passengers
- Fail to comply with conditions imposed by an immigration officer
- Seek/obtain leave to enter/remain in the UK by deception
- Obtained leave to enter/remain in the UK by means including deception
- Sought to obtain leave to enter/remain in the UK by means including deception
- Obtained the avoidance/postponement/revocation of enforcement action by means including deception
- Sought to obtain the avoidance/postponement/revocation of enforcement action by means including deception
- Offering unlawful immigration service/advice
- Provide immigration advice or service in contravention of a prohibition
- Provide immigration advice or

- immigration service in prohibition of a restraining order
- Immigration - false statement or representation to obtain support
  - Made a false statement or representation to obtain support
  - Produced or gave a false document or information to obtain support
  - Knowingly caused or allowed to be produced a false document or information to obtain support
  - Failed to notify change of circumstances in accordance with a provision to obtain support
  - Cause another to fail notify change of circumstances required in accordance with provision to obtain support
  - Immigration - false statement/representation to obtain benefit
  - Made a false statement or representation to obtain benefit
  - Produced or gave false document/information to obtain benefit
  - Allowed/caused to be produced a false document/information to obtain benefit
  - Failed to notify change of circumstances in accordance with provision to obtain benefit
  - Cause another to fail notify change of circumstances required in accordance with provision to obtain benefit
  - Failure of sponsor to maintain applicant - immigration rules
  - Immigration/custody officer disclose information other than in the course of duty or without authorisation
  - Seek or obtain leave to enter or remain in the UK by deception
  - Asylum applicant fail to submit to medical examination
  - By deception avoid enforcement action against you to enter or remain in the UK
  - Fail to attend and give evidence or produce documents before an adjudicator or tribunal
  - Fail to comply with notice under s. 136(3) to provide Secretary of State with information specified in notice
  - Assist unlawful immigration into EU member state
  - Help asylum seeker to enter the united kingdom
  - Assist entry in united kingdom in breach of deportation order
  - Assist entry into united kingdom in breach of exclusion order
  - Possess a false/altered registration card without-reasonable-excuse
  - Use false registration card for a purpose for which a registration card is issued
  - Attempt to use false registration card for a purpose for which registration card is issued
  - Unable to produce an immigration document at a leave or asylum interview
  - Unable to produce an immigration document at a leave or asylum interview in respect of self
  - Unable to produce an immigration document at a leave or asylum Interview in respect of dependent child
  - Fail to comply with requirement to take specified action as required by Secretary of State
  - Possessing ammunition without certificate
  - Possessing shotgun without certificate
  - Possess shotgun without certificate
  - Having small calibre pistol outside premises of licensed pistol club
  - Failing to comply with conditions of firearm certificate
  - Failing to comply with conditions of shotgun certificate
  - Falsifying certificate with view to acquisition of firearm/shotgun
  - Falsifying certificate with a view to acquisition of firearm

- Falsifying certificate with view to acquisition of shotgun
- Taking firearm in pawn
- Taking firearm or ammunition in pawn
- Taking shotgun in pawn
- Failing to comply with condition of defence council authority relative to firearms
- Failing to surrender authority to possess prohibited weapon
- Contravening order restricting removal of firearms
- Contravening order restricting removal of ammunition
- Making false statement to obtain police permit to possess firearms
- Making false statement to obtain police permit (firearm other than shotgun)
- Making false statement to obtain police permit (shotgun)
- Making false statement to obtain permit for auction of firearms
- Making false statement to obtain permit for action of firearms
- Making false statement to obtain permit for auction of shotguns
- Making false statement to obtain permit for removal of firearms used for signalling on ship
- Making false statement to obtain permit for removal of firearms used for signalling on aircraft
- Selling firearm to person under 17
- Hiring firearm to person under 17
- Selling shotgun to person under 17
- Selling ammunition to person under 17
- Selling firearm ammunition to person under 17
- Selling shotgun ammunition to person under 17
- Selling air weapon ammunition to person under 17
- Hiring firearm/shotgun/air weapon to person under 17
- Hiring shotgun to person under 17
- Hiring air weapon to person under 17
- Hiring ammunition to person under 17
- Hiring firearm ammunition to person under 17
- Hiring shotgun ammunition to person under 17
- Hiring air weapon ammunition to person under 17
- Supplying firearm to person under 14
- Supplying ammunition to person under 14
- Making gift of shotgun and ammunition to person under 15
- Supplying firearm/shotgun/air weapon to drunk person
- Supplying firearm to drunk person
- Supplying shotgun to drunk person
- Supplying air weapon to drunk person
- Supplying ammunition to drunk person
- Supplying firearm ammunition to drunk person
- Supplying shotgun ammunition to drunk person
- Supplying air weapon ammunition to drunk person
- Supplying firearm/shotgun/air weapon to insane person
- Supplying firearm to insane person
- Supplying shotgun to insane person
- Supplying air weapon to insane person
- Supplying ammunition to insane person
- Supplying firearm ammunition to insane person
- Supplying shotgun-ammunition- to insane person
- Supplying air weapon ammunition to insane person
- Making false statement to procure grant of firearm certificate

- Making false statement to procure grant of a shotgun certificate
- Making false statement to procure renewal of firearm certificate
- Making false statement to procure renewal of shotgun certificate
- Making false statement to procure variation of firearm certificate
- Making false statement to secure registration entry in firearm dealers place of business register
- Making false statement to procure registration
- Making false statement to procure entry in register
- Registered firearms dealer failing to enter place of business into register
- Firearms dealer failing to comply with conditions of registration
- Firearms dealer omitting entry in register
- Firearms dealer falsifying entry in register
- Failing to notify police of firearms transaction within 7 days
- Transferor of shotgun failing to comply with instructions in certificate of transferee.
- Transferor of shotgun failing to notify police of transaction within 7 days.
- Transferee of shotgun failing to notify police of transaction within 7 days.
- Selling ammunition for smooth-bore guns to unauthorised person in the UK.
- Making false statement to obtain visitors permit.
- Making false statement to obtain visitors permit (firearm)
- Making false statement to obtain visitors permit (shotgun)
- Failing to comply with conditions of visitors permit.
- Failing to comply with conditions of visitors permit (firearm)
- Failing to comply with conditions of visitors permit (shotgun)
- Firearms dealer failing to notify police within 48 hours of export transaction.
- Failing to notify police of firearm sold for export within 48 hours
- Failing to notify police of shotgun sold for export within 48 hours
- Making false statement in respect of museum licence.
- Failing to comply with conditions of museum licence.
- Failing to comply with notice to surrender certificate and any firearm/ammunition.
- Failing to surrender firearm
- Failing to surrender shotgun
- Failing to surrender firearm ammunition
- Failing to surrender shotgun ammunition
- Failing to surrender revoked firearm certificate
- Failing to surrender revoked shotgun certificate
- Auctioneer/carrier/warehouseman failing to ensure the safe custody of any firearm) ammunition,
- Failing to keep firearm safe
- Failing to keep shotgun safe
- Failing to keep firearm ammunition safe
- Failing to keep shotgun ammunition safe
- Auctioneer/carrier/warehouseman failing to report to police loss or theft of any firearm/ammunition.
- Failing to report loss of firearm
- Failing to report loss of shotgun
- Failing to report theft of firearm
- Failing to report theft of shotgun
- Failing to report loss of firearm ammunition
- Failing to report loss of shotgun ammunition



- Failing to report theft of firearm ammunition
- Failing to report theft of shotgun ammunition
- Person under 18 using certificated firearm for unauthorised purpose.
- Failing to produce European firearms pass.
- Failing to produce article 7 authority.
- Failing to surrender European firearms pass.
- Failing to surrender article 7 authority.
- Failing to surrender revoked article 7 authority.
- Holder of European firearms pass failing to notify chief officer of police of loss and/or theft of firearm.
- Holder of European firearms pass failing to produce it to chief officer of police for endorsement.
- Failing to notify police of shotgun transaction authorised by visitors permit within 48 hours.
- Failing to give full details in notice to police of shotgun transaction authorised by visitors permit.
- Failing to produce firearms pass issued in another EC state.
- Failure to comply with any condition of a permit to keep a pistol outside the premises of a pistol club
- Making any false statement so as to procure a permit to possess a pistol outside a pistol club
- Small calibre pistol stored or used in contravention of the act
- Failure by club management to comply with conditions of club licence
- Failure by pistol club officer to comply with requirements for maintaining club register
- Knowingly or recklessly making a false entry in a pistol club register
- Make false statement to procure grant renew or vary club licence or release of pistol from police custody
- Failure by transferor or transferee of firearm to comply with requirements laid down under s. 32
- Failure by transferee of shotgun to produce to transferor certificate or permit entitling him to acquire it
- Fail to notify police within one week of transfer by certificate/permit holder. (except shotgun/air weapon)
- Failure to notify transfer of shotgun to police within one week by permit/certificate holder in GB
- Fail to notify police within 1 week of loss/destruction/etc. of ammo/firearm (except shotgun/air weapon) in GB
- Fail to notify police within one week of destruction/loss/deactivation of shotgun in GB
- Fail to notify police within 14 days of sale or disposal of firearm (except shotgun/air weapon) o/s GB
- Fail to notify police within 14 days of sale or disposal of shotgun outside Great Britain
- Fail notify police within 14 days of loss destruction etc. firearm/ammo o/s GB (except shotgun/air weapon)
- Fail to notify police within 14 days of loss destruction deactivation of shotgun o/s GB
- Make a false statement for the purpose of procuring release of small calibre pistol from police custody
- Failure by transferor of firearm (except shotgun/air weapon) to comply with instructions in certificate/permit
- Failure by transferor of firearm (except shotgun/air weapon) to hand such firearm to transferee in person
- Failure by transferee of firearm (except shotgun/alt-weapon) to receive such firearm in person
- Failure by transferor of shotgun to comply with instructions in certificate /permit produced by transferee
- Failure by transferor of shotgun to hand shotgun to transferee in person
- Failure by transferee of shotgun to

- receive shotgun in person
- Making a gift of firearm or ammunition to a person under 14
- Lending a firearm or ammunition to a person under 14
- Parting with possession of firearm/ammunition to person under 14 not entitled to hold firearm certificate
- Making false statement to procure grant/renewal of shotgun certificate
- Fail comply with notice to produce/surrender European firearms pass/authority or notify loss or theft
- Make false statement for firearm/shotgun certificate
- Obstruct officer exercising powers under s. 46 Firearms Act
- Failing to notify police of purchase of category c firearm in another EC state within 14 days
- Failing to give full details in notice to police of purchase of category c firearm in another EC state
- Registered firearms dealer fail to notify sale properly
- Failing to give full details in notice to police of sale of firearm for export
- Failing to give full details in notice to police of sale of shotgun for export
- Fail to give proper notice of transfer of firearm
- Fail to give proper notice of transfer of shotgun
- Fail to notify deactivation/destruction/loss of firearm
- Fail to notify loss of ammunition
- Fail to give proper notice regarding deactivation/destruction/loss of firearm
- Fail to give proper notice regarding deactivation/destruction/loss of shotgun
- Fail to give proper notice regarding the loss of ammunition
- Fail to give proper notice of disposal of firearm abroad
- Fail to give proper notice of disposal of shotgun abroad
- Fail to notify loss of ammunition abroad
- Fail to give proper notice of deactivation/destruction/loss of firearm
- Fail to give proper notice of loss of ammunition
- Non compliance with condition of firearm certificate - aggravated form (small calibre pistols)
- Non compliance condition of firearm certificate (not aggravated form - firearms except small calibre pistols)
- Falsify certificate to acquire/purchase a firearm etc..
- Falsify certificate to acquire/purchase a firearm
- Falsify certificate to acquire/purchase ammunition
- Falsify certificate to acquire/purchase shotgun
- Possess for sale/transfer/repair/test a firearm - not registered as dealer
- Possess for sale/transfer/repair/test a firearm – not registered dealer
- Possess for sale/transfer/repair/test ammunition not registered as dealer
- Possess for sale/transfer/repair/test-shotgun - not registered dealer
- Making a false statement for a firearm certificate
- Making a false statement for a shotgun certificate
- Carrying air weapon in public place (loaded or not)
- Possess loaded/unloaded air weapon in a public place
- Make gift of air weapon and ammunition to person under 14
- Giving possession of air weapon or ammunition to person under 14
- Person under 17 have air weapon on premises allow missiles from weapon travel beyond boundaries of premises

- Use of factory or magazine for gunpowder for purpose not in accordance with licence
- Supply of fireworks or firework assemblies to person apparently under 18
- Relinquished possession of object prior to date specified in notice under s. 7
- Obstruct entry into or searching premises
- Obstruct entry into or searching premises under authority given or warrant under ss. 8 or 10
- Obstruct making safe seizure or removal of object or affixing warning notice under s. 8(5)
- Obstruct destruction of object
- Interfere with warning notice affixed under s. 8(5)
- Interfere with warning notice affixed under s. 8(5) Before specified date
- Move or interfere with object subject of warning notice affixed under s. 8(5)
- Make false misleading statement in response to notice under ss.7, 9 or 10
- Refuse to comply with request from authorised fact finding commission
- Obstruct member of fact-finding mission
- Obstruct person in exercise of any power conferred by warrant issued under s. 18
- Person under 18 not exempt under e.g. 6 Possess adult firework in public place
- Person not exempt under Reg.6 Possess a category 4 firework
- Use adult firework during night hours when not exempt by Reg.7(2)
- Supply/offer/agree supply category 3 firework which produces sound pressure level exceeding 120 decibels
- Supply/expose for sale adult firework not in accordance with license under regulations
- Supply/expose for supply adult fireworks fail display prescribed notice/provide information to every person
- Import firework having failed to provide information required to customs and excise
- Requirement to supply information under firework regulations
- Fail to comply with requirement imposed under fireworks regulations to give/ not give information
- Recklessly make statement false in material particular re requirement to give information under firework regs.
- Possessing offensive weapon at public meeting
- Possessing offensive weapon at procession
- Possessing offensive weapon in public place
- Manufacturing a flick knife
- Selling a flick knife
- Hiring a flick knife
- Offering a flick knife for sale
- Offering a flick knife for hire
- Exposing a flick knife for sale
- Exposing a flick knife for hire
- Possessing a flick knife for sale
- Possessing a flick knife for hire
- Lending a flick knife to another
- Giving a flick knife to another
- Manufacturing a gravity knife
- Selling a gravity knife
- Hiring a gravity knife
- Offering a gravity knife for sale
- Offering a gravity knife for hire
- Exposing a gravity knife for sale
- Exposing a gravity knife for hire
- Possessing a gravity knife for sale
- Possessing a gravity knife for hire
- Lending a gravity knife to another

- Giving a gravity knife to another
- Selling crossbow to person under 17
- Hiring crossbow to person under 17
- Selling part of a crossbow to a person under 17
- Hiring part of a crossbow to person under 17
- Person under 17 buying a crossbow
- Person under 17 hiring a crossbow
- Person under 17 buying part of crossbow
- Person under 17 hiring part of crossbow
- Person under 17 possessing crossbow without adult supervision
- Person under 17 possessing unassembled crossbow without adult supervision
- Possessing article with blade or point in public place
- Having article with blade or which was sharply pointed in public place
- Having sharply pointed article in public place
- Manufacturing article with blade or point
- Selling article with blade or point
- Hiring article with blade or point
- Offering article with blade or point for sale
- Offering article with blade or point for hire
- Exposing article with blade or point for sale
- Exposing article with blade or point for hire
- Possessing article with blade or point for sale
- Possessing article with blade or point for hire
- Lending article with blade or point to another
- Giving article with blade to another
- Manufacture a knuckle duster
- Sell a knuckle duster.
- Offer for sale a knuckle duster
- Import a knuckle duster
- Hire a knuckle duster
- Lend a knuckle duster
- Give a knuckle duster
- Manufacture a swordstick
- Sell a swordstick
- Offer for sale a swordstick
- Import a swordstick
- Hire a swordstick
- Lend a swordstick
- Give a swordstick
- Manufacture a handclaw
- Sell a handclaw
- Offer for sale a handclaw
- Import a handclaw
- Hire a handclaw
- Lend a handclaw
- Give a handclaw
- Manufacture a belt buckle knife
- Sell a belt buckle knife
- Offer for sale a belt buckle knife
- Import a belt buckle knife
- Hire a belt buckle knife
- Lend a belt buckle knife
- Give a belt buckle knife
- Manufacture a push dagger
- Sell a push dagger
- Offer for sale a push dagger
- Import a push dagger
- Hire a push dagger
- Lend a push dagger
- Give a push dagger
- Manufacture a hollow kubotan
- Sell a hollow kubotan
- Offer for sale a hollow kubotan
- Import a hollow kubotan

- Hire of hollow kubotan
- Lend a hollow kubotan
- Give a hollow kubotan
- Manufacture a foot claw
- Sell a foot claw
- Offer for sale a foot claw
- Import a foot claw
- Hire a foot claw
- Lend a foot claw
- Give a foot claw
- Manufacture a shuriken, shaken or death star
- Sell a shuriken, shaken or death star
- Offer for sale a shuriken, shaken or death star
- Import a shuriken, shaken or death star
- Hire a shuriken, shaken or death star
- Lend a shuriken, shaken or death star
- Give a shuriken, shaken or death star
- Manufacture a balisong or butterfly knife
- Sell a balisong or butterfly knife
- Offer for sale a balisong or butterfly knife
- Import a balisong or butterfly knife
- Hire a balisong or butterfly knife
- Lend a balisong or butterfly knife
- Give a balisong or butterfly knife
- Manufacture a telescopic truncheon
- Sell a telescopic truncheon
- Offer for sale a telescopic truncheon
- Import a telescopic truncheon
- Hire a telescopic truncheon
- Lend /Give a telescopic truncheon
- Manufacture a blow pipe or blow gun
- Sell a blow pipe or blow gun
- Offer for sale a blow pipe or blow gun
- Import a blow pipe or blow gun
- Hire a blow pipe or blow gun
- Lend a blow pipe or blow gun
- Give a blow pipe or blow gun
- Manufacture a kusari gama
- Sell a kusari gama
- Offer for sale a kusari gama
- Import a kusari gama
- Hire a kusari gama
- Lend a kusari gama
- Give a kusari gama
- Manufacture kyoketsu shoge
- Sell a kyoketsu shoge
- Offer for sale a kyoketsu shoge
- Import a kyoketsu shoge
- Hire a kyoketsu shoge
- Lend a kyoketsu shoge
- Give a kyoketsu shoge
- Manufacture manrikigusari or kusari
- Sell a manrikigusari or kusari
- Offer for sale a manrikigusari or kusari
- Import a manrikigusari or kusari
- Hire a manrikigusari or kusari
- Lend a manrikigusari or kusari
- Give a manrikigusari or kusari
- Manufacturing offensive weapon
- Selling offensive weapon
- Hiring offensive weapon
- Offering offensive weapon for sale
- Offering offensive weapon for hire
- Exposing offensive weapon for sale
- Exposing offensive weapon for hire
- Having offensive weapon for sale
- Having offensive weapon for hire
- Lending offensive weapon to another
- Giving offensive weapon to another
- Importing offensive weapon
- Have an offensive weapon whilst being concerned in illicit movement, carriage or concealment of goods

- Disguised and with offensive weapon concerned in the illicit movement, carriage or concealment of goods
- Person fail to stop when required to do so during stop and search operation for offensive weapons
- Vehicle fail to stop when required to do so during stop and search operation for offensive weapons
- Sell offensive weapon to a person under 16
- Selling or hiring a knife which indicates or suggests its suitability for combat
- Publish any material in connection with marketing a knife which indicates/ suggests suitability for combat
- Publish material in connection with market knife likely to stimulate violent behaviour by its use as weapon
- Offer or expose for sale or hire any knife in a way which indicates or suggests
  - suitability for combat
- Possession for the purpose of sale or hire a knife in a way which indicates/ suggests suitability for combat
- Sell/hire knife in a way likely to stimulate/encourage violent behaviour by its use as a weapon
- Offer/expose for sale/hire knife in way likely to stimulate/encourage violent behaviour by its use as weapon
- Possess for hire/sale a knife in way likely to stimulate/encourage violent behaviour by its use as a weapon
- Having offensive weapon for sale or hire
- Lending or giving offensive weapon to another
- Exposing offensive weapon for sale or hire
- Offering offensive weapon for sale or hire
- Selling or hiring an offensive weapon
- Stop/search operation for offensive weapons fail to remove item that conceals identity when so directed
- Make false or misleading statement in response to notice served under ss. 4/6/7 of the act
- Knowingly make false or misleading statement in response to notice made under s. 12 of the act
- Knowingly make false or misleading statement for licensing purposes
- Make false or misleading statement requested under s. 21(1) to establish whether an offence committed
- Knowingly make false or misleading statement in response to notice served under s. 22(1)
- False/misleading statement in response to requirement imposed re. Information for purposes of convention
- Disclosing information in contravention of this section
- Landing prohibited animal without licence
- Landing animal w/i to evade rabies regulations
- Unlawfully permitting attempted landing of animal in Great Britain brought from place outside Great Britain
- Unlawfully causing attempted landing of animal in Great Britain brought from place outside Great Britain
- Unlawfully permitting landing of animal in great Britain brought from place outside Great Britain
- Unlawfully causing landing of animal in great Britain brought from place outside Great Britain
- Unlawfully attempting to land animal in great Britain brought from place outside Great Britain
- Unlawfully landing animal in great Britain brought from place outside Great Britain
- Post office employee opening post
- Post office employee delaying post
- Sending obscene telegram

- Sending threatening telegram
- Sending false telegram
- Making obscene phone call
- Making threatening phone call
- Making false phone call
- Using public telecommunications system to send offensive matter
- Using public telecommunications system to send indecent matter
- Using public telecommunications system to send obscene matter
- Post office employee detaining postal packet
- Using public telecommunications system to send menacing matter
- Using public telecommunications system to send false matter
- Forging telegram
- Improperly disclosing telegram
- Unlawfully disclosing information obtained during provision of data processing service
- Using public telecom system to send false phone message to cause annoyance/inconvenience/needless anxiety
- Modifying contents of message sent by public telecommunications system
- Deliberate interference with any wireless telegraphy
- Intercepting communication in course of transmission by post
- Intercepting communication in course of transmission by public telecommunication system
- Sending a letter or other article conveying an indecent or grossly offensive message
- Sending a letter or other article conveying a threat
- Sending a letter or other article conveying false information
- Sending any article which is, in whole or part, indecent or grossly offensive
- Persistently using public telecommunications system to cause annoyance, inconvenience or needless anxiety
- Giving false alarm of fire
- Knowingly give a false alarm of fire to person acting on behalf of fire and rescue authority
- Causing false alarm of fire to be given
- Knowingly cause to be given a false alarm of fire to person acting on behalf of fire and rescue authority
- Attempting to send dangerous article by post
- Establish or use a station or apparatus for wireless telegraphy without a licence
- Possess station for wireless telegraphy w/i to use by himself or another
- Possess apparatus for wireless telegraphy w/i to use by himself or another
- Control station for wireless telegraphy w/i to use by himself or another
- Control apparatus for wireless telegraphy w/i/ to use by himself or another
- Person in charge of premises knowingly causing them to be used for making unlawful broadcast
- Person in charge of premises knowingly permitting them to be used for making unlawful broadcast
- Person in charge of premises believing they were being used for unlawful broadcast failing to prevent this
- Participate in management of station knowing or believing it was making unauthorised broadcast
- Participate in financing station knowing or believing that it was making unauthorised broadcast
- Participate in operating or running station knowing or believing it was making unauthorised broadcast
- Supply wireless telegraphy equipment knowing or believing it was to be used

- to make unauthorised broadcast
- Install wireless telegraphy equipment knowing or believing it was to be used to make unauthorised broadcast
  - Repair wireless telegraphy equipment knowing or believing it was to be used to make unauthorised broadcast
  - Maintain wireless telegraphy equipment knowing or believing it was to be used to make unauthorised broadcast
  - Render service knowing or believing this would facilitate the making of unauthorised broadcast
  - Supply film knowing or believing that an unauthorised broadcast of it was to be made
  - Supply sound recording knowing or believing an unauthorised broadcast of it was to be made
  - Make literary work knowing or believing an unauthorised broadcast of it was to be made
  - Make dramatic work knowing or believing unauthorised broadcast of it was to be made
  - Make musical work knowing or believing unauthorised broadcast of it was to be made
  - Make artistic work knowing or believing unauthorised broadcast of it was to be made
  - Participate in unauthorised broadcast as an announcer knowing or believing it was unauthorised
  - Participate in unauthorised broadcast as performer knowing or believing that it was unauthorised
  - Participate in unauthorised broadcast by delivering speech knowing or believing it was unauthorised
  - Advertise by means of unauthorised broadcast knowing or believing that it was unauthorised
  - Invite another to advertise by means of unauthorised broadcast knowing or believing it was unauthorised
  - Publish time or other details of unauthorised broadcast knowing or believing it was unauthorised
  - Publish time or other detail of unauthorised broadcast knowing or believing it was unauthorised
  - Publish advertisement to promote station knowing or believing it was making unauthorised broadcast
  - Supply material for inclusion in programme of proscribed foreign satellite broadcasting service
  - Offer to supply material for inclusion in programme of proscribed foreign satellite broadcasting service
  - Arrange for another to supply material for programme of proscribed foreign satellite broadcasting service
  - Invite another to supply material for use in programme of proscribed foreign satellite broadcasting service
  - Advertise own goods or services by means of programme of proscribed foreign satellite broadcasting service
  - Advertise time of, details of or advertisement to promote proscribed foreign satellite broadcasting service
  - Supply equipment for use in day to day running of proscribed foreign satellite broadcasting service
  - Supply material for inclusion in programme of proscribed foreign satellite broadcasting service
  - Offer to supply equipment for reception of programmes of proscribed foreign satellite broadcasting service
  - Restriction on dealings in and custody of certain apparatus
  - Manufacturing apparatus contrary to restriction in order made under s. 7
  - Selling apparatus contrary to restriction in order made under s. 7
  - Offering for sale apparatus contrary to restriction in order made under s. 7
  - Letting on hire apparatus contrary to restriction in order made under s. 7
  - Offering to let on hire apparatus contrary to restriction in order made



- under s. 7
- Indicating willingness to sell or let on hire apparatus contrary to restriction in order made under s. 7
  - Having apparatus in ones custody or control without reasonable excuse contrary restriction in order
  - Contravening or failing to comply with terms or conditions attached to authority
  - Disclosing without authorisation message sent by wireless telegraphy
  - Disclose details of s. 49 notice
  - Intercepting a communication whether in postal or public telecommunication system
  - Intercepting a communication in a private telecommunication system
  - Fail to give effect to interception warrant
  - Fail to disclose key to protected information
  - Disclose details of an interception warrant
  - Delay or open postal packet or mailbag - operator
  - Delay or open postal packet or mailbag - non operator
  - Open incorrectly delivered postal packet
  - Send by post a postal packet containing any creature article or thing which is prohibited
  - Send by post/postal packet any obscene print painting or article
  - Send by post/postal packet a record of a picture book or card which is obscene or prohibited
  - Send postal packet with indecent or obscene cover
  - Contravention of direction issued by the Secretary of State.
  - Disclosure of direction issued by the Secretary of State
  - Disclose information obtained through Postal Services Act 2000
  - Change interfere unique device identifier of mobile wireless communications device
  - Have custody control of thing to change interfere with unique identifier of mobile phone for unlawful purpose
  - Supply thing to change interfere with unique identifier of mobile phone for unlawful purpose
  - Offer to supply things to change interfere with unique identifier of mobile phone for unlawful purpose
  - Obtain electronic communication service with intent to avoid payment
  - Possess thing for fraudulent use of electronic communications service
  - Supply thing to fraudulently use electronic communications service
  - Offer to supply thing to fraudulently use electronic communications service
  - Send by communication network offensive/indecent/obscene/menacing message or matter
  - Cause to be sent by public communication network offensive/indecent/obscene/menacing message or matter
  - Send false message by public electronic communication network to cause annoyance/ inconvenience/ anxiety
  - Cause to be sent by public communication network a false message to cause annoyance/ inconvenience/anxiety
  - Persistently make use of public communication network to cause annoyance/ inconvenience/anxiety
  - Publishing defamatory libel knowing it to be false
  - Publishing defamatory libel
  - Libel
  - Blasphemous libel
  - Maliciously publishing defamatory libel knowing it to be false
  - Harassing tenant

- Unlawfully harassing occupier with intent to cause him/her to refrain from exercising remedy
- Unlawfully harassing occupier with intent to cause him/her to leave premises
- Withholding services with intent to cause occupier to leave premises
- Withholding services with intent to cause occupier to refrain from exercising remedy
- Landlord or landlady withholding services
- Agent of landlord or landlady withholding services
- Landlord/agent harass occupier
- Unlawfully evicting occupier
- Unlawfully attempting to evict occupier
- Pursued a course of conduct which amounted to harassment
- Harassment - put in fear of violence
- Harassment - breach of restraining order
- Harassment breach of civil injunction
- Contravene police direction preventing harassment at home
- Acting as bookmaker without permit
- Betting/bookmaking in public place
- Betting in the street
- Betting in a public place
- Employing a person under 18 in betting
- Betting with person under 18
- Organising unlicensed gaming
- Organising unlawful gaming
- Organising gaming in which charge is made on taking part
- Organising gaming involving levy on stake or winnings
- Managing unlicensed gaming
- Managing unlawful gaming
- Managing gaming in which charge is made on taking part
- Managing gaming involving levy on stake or winnings
- Failure to comply with gaming regulations or provisions by principal of licensed premises
- Principal of licensed premises or licence-holder permitting person not present on premises
- Principal of licensed premises or licence-holder permitting non-member or guest of non-member
- Principal of club or miner's welfare institute permitting non-member or guest of non-member
- Principal of licensed premises or licence-holder contravening restriction on games to be played
- Principal of licensed premises or licence-holder making prohibited charge for taking part in gaming
- Principal of licensed premises or licence-holder making prohibited levy on stake or winnings
- Principal of licensed premises or licence-holder providing credit for gaming
- Principal of licensed premises or licence-holder failing to exclude person under 18 years from room
- Principal of licensed premises or licence-holder permitting gaming on Sunday between prohibited hours
- Principal of licensed premises allowing person without certificate to perform function at gaming
- Principal of licensed premises contravening special provision for bingo clubs
- Principal of licensed premises contravening regulation of Secretary of State about conduct of gaming
- Principal of licensed premises contravening regulation of Secretary of State about permitted hours of gaming
- Principal of licensed premises contravening restriction of licensing authority on permitted hours of gaming

- Principal of licensed premises contravening restriction of licensing authority on kinds of games played
- Failure to comply with gaming regulations or provisions by officers of licensed premises
- Officer of licensed premises permitting person not present on premises to participate in gaming
- Officer of licensed premises permitting non-member or guest of non-member to participate in gaming
- Officer of club or miners' welfare institute permitting non-member or guest of non-member to participate
- Officer of licensed premises contravening restriction on games to be played
- Officer of licensed premises making prohibited charge for taking part in gaming
- Officer of licensed premises making prohibited levy on stake or winnings
- Officer of licensed premises providing credit for gaming
- Officer of licensed premises failing to exclude person under 18 yrs from room whilst gaming is taking place.
- Officer of licensed premises permitting gaming on Sunday between prohibited hours
- Officer of licensed premises allowing person without certificate to perform function at gaming
- Officer of licensed premises contravening special provision for bingo clubs
- Officer of licensed premises contravening regulation of Secretary of State about conduct of gaming
- Off licensed premises contravening regulation of Secretary of State about permitted hours of gaming
- Officer of licensed premises contravening restriction of licensing authority on permitted hours of gaming
- Officer of licensed premises contravening restriction of licensing authority on kinds of games played
- Unauthorised person selling gaming machine
- Unauthorised person supplying gaming machine
- Unauthorised person maintaining gaming machine
- Breach of regulations governing sale of gaming machine
- Breach of regulations governing supply of gaming machine
- Breach of regulations governing maintenance of gaming machine
- Selling gaming machine on terms relating to extent of use
- Supplying gaming machine on terms relating to extent of use
- Undertaking to maintain gaming machine on terms relating to extent of use
- Making available more than two gaming machines
- Charging more than specified amount for playing gaming machine
- Paying winnings other than coins delivered by the machine
- Paying winnings over prescribed amount
- Paying winnings less than prescribed percentage of charges
- Not displaying on gaming machine statement of the value of the prize
- Not displaying on gaming machine statement of the circumstances in which the prize cannot be won
- Not displaying on gaming machine statement of the payout as a percentage of the takings
- Having gaming machine in operation while public have access
- Charging more than prescribed amount for playing gaming machine on premises subject to licence and direction
- Paying excessive gaming machine winnings on premises subject to

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| <p>licence and control</p> <ul style="list-style-type: none"> <li>■ Using gaming as main inducement to attend travelling fair</li> <li>■ Breach of regulations governing gaming machines by holder of licence</li> <li>■ Breach of regulations governing gaming machines by officer of club</li> <li>■ Breach of regulations governing tokens by holder of licence</li> <li>■ Breach of regulations governing tokens by officer of club</li> <li>■ Breach of regulations governing records of gaming machine operations</li> <li>■ Allowing illegally operated gaming machine to be on premises</li> <li>■ Conducting entertainment at which gaming machine used in breach of regulations</li> <li>■ Charging more than prescribed amount for playing gaming machine</li> <li>■ Paying excessive gaming machine winnings</li> <li>■ Consenting to illegal operation of gaming machine</li> <li>■ Removing money from gaming machine without authorization</li> <li>■ Selling a gaming machine in contravention of regulations</li> <li>■ Supplying a gaming machine in contravention of regulations</li> <li>■ Maintaining a gaming machine in contravention of regulations</li> <li>■ Selling tokens for gaming machine in contravention of regulations</li> <li>■ Supplying tokens for gaming machine in contravention of regulations</li> <li>■ Causing gaming machine to be used in contravention of regulations</li> <li>■ Permitting gaming machine to be used in contravention of regulations</li> <li>■ Selling gaming machine knowing that s. 33 provisions would be contravened</li> <li>■ Supplying gaming machine knowing that s. 33 provisions would be</li> </ul> | <p>contravened</p> <ul style="list-style-type: none"> <li>■ Selling gaming machine knowing that s. 34 provisions would be contravened</li> <li>■ Supplying gaming machine knowing that s. 34 provisions would be contravened</li> <li>■ Selling gaming machine knowing that s. 35 provisions would be contravened</li> <li>■ Supplying gaming machine knowing that s. 35 provisions would be contravened</li> <li>■ Conduct business or agency which unlawfully invites placing of dutiable bets</li> <li>■ Knowingly issue, circulate or distribute advertisement which unlawfully invites placing of dutiable bets</li> <li>■ Possess for issue, circulate or distribute advertisement which unlawfully invites placing of dutiable debts</li> <li>■ UK bookmaker unlawfully placing or offering to place dutiable bet with bookmaker outside the UK</li> <li>■ UK bookmaker unlawfully placing dutiable bet with bookmaker outside the UK</li> <li>■ Gaming without a licence</li> <li>■ Unlawfully provide a gaming machine</li> <li>■ Make statement concerning pool or general betting duty which is known to be false in a material particular</li> <li>■ Make false statement recklessly concerning pool or general betting duty</li> <li>■ Using false document with intent to deceive in manner concerning pool or general betting duty</li> <li>■ Being knowingly concerned in fraudulent evasion of general betting duty</li> <li>■ Being knowingly concerned in fraudulent evasion of pool betting duty</li> <li>■ Carry on pool betting without a permit</li> </ul> |
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- Make statement concerning gaming licence duty known to be false in a material particular
- Make false statement recklessly concerning gaming licence duty
- Using false document with intent to deceive in matter concerning gaming licence duty
- Being knowingly concerned in fraudulent evasion of gaming licence duty
- Fraudulently evading bingo duty
- Promoting bingo without being registered
- Playing illegal combined bingo
- Print/sell/distribute/offer/advertise/possess for sale/distribution tickets in lottery in UK or elsewhere
- Small lotteries incidental to exempt entertainments - fail to conform with conditions
- Private lotteries - fail to conform to conditions regarding promotion and conduct
- Offence relating to societies lotteries and local lotteries - contravention of regulations
- Contravention of lotteries regulations
- Through a newspaper/ trade/business a competition which offers prizes to forecast result of future event etc.
- Breach of conditions at exempt entertainments
- Breach of conditions at commercial entertainments
- Allowing unlawful gaming
- Selling national lottery ticket to person under 16
- Permitting person under 16 to sell national lottery ticket
- Selling national lottery ticket to person in street
- Inviting purchase of national lottery ticket in street
- Selling national lottery ticket in forbidden premises
- Inviting purchase of national lottery ticket in forbidden premises
- Selling national lottery ticket by means of unattended vending machine
- Selling national lottery ticket at home of person
- Inviting purchase of national lottery ticket at home of person
- Giving false identification that lottery was part of or connected with the national lottery
- Carry on pool betting business when s. 4(2), (3) or (5) does not apply
- Carry on pool betting business on track when s. 4(2), (3) or (5) does not apply
- Carry on pool betting otherwise than on track when s. 4(2), (3) or (5) does not apply
- Sending or procuring despatch of obscene publication in post
- Sending obscene article by post
- Procuring the sending of obscene article by post
- Attempting to send obscene article by post
- Possessing obscene articles with a view to publication for gain
- Publishing obscene article
- Having negatives for publication of obscene articles for gain
- Causing annoyance by selling indecent matter
- Causing annoyance by distributing indecent matter
- Causing annoyance by exhibiting indecent matter
- Exhibiting indecent pictures to public view
- Exhibiting indecent prints to public view
- Publicly displaying indecent matter
- Printing comics tending to corrupt
- Publishing comics tending to corrupt

- Selling comics tending to corrupt
- Conspiracy to corrupt public morals or outrage public decency
- Conspiracy to corrupt public morals
- Conspiracy to outrage public decency
- Providing in a cable programme service a programme involving the publication of an obscene article
- Providing in a cable programme service recorded matter which involves the publication of an obscene article
- Driving whilst disqualified
- Removing corpse from grave
- Disposition of corpse to obstruct coroner
- Preventing lawful and decent burial of dead body
- Using premises as an unlicensed sex establishment
- Licence holder employing disqualified person in sex establishment
- Contravening terms of sex establishment licence
- Making false statement in connection with application for sex establishment licence
- Solemnising a marriage outside specified hours
- Solemnising a marriage without banns having been duly published
- Solemnising a marriage in a place where banns may not be published
- Solemnising a marriage falsely pretending to be in holy orders
- Solemnising a marriage in an unregistered building
- Solemnising a marriage in a registered building without the district registrar
- Solemnising a marriage in the office of a superintendent registrar without the district registrar
- Solemnising a marriage within 21 days of entry of notice of marriage in notice book
- Solemnising a marriage more than 3 months after entry of notice of marriage in notice book
- Issuing a marriage certificate within 21 days of entry of notice of marriage in notice book
- Issuing a marriage licence within 24 hours of entry of notice of marriage in notice book
- Issuing marriage certificate or licence more than 3 months after entry of notice of marriage in notice book
- Issuing a forbidden marriage certificate
- Solemnising a void marriage
- Permitting a void marriage to be solemnised
- Registering a void marriage
- Any offence contrary to common law not listed elsewhere
- Supplying a video recording of an unclassified work
- Offering to supply a video recording of an unclassified work
- Possessing a video recording of an unclassified work for the purpose of supply
- Supplying a video recording of a classified work in breach of classification
- Offering to supply a video recording of a classified work in breach of classification
- Supplying elsewhere a video recording of a work classified for supply in a licensed sex shop
- To supply elsewhere a video recording of a work classified for supply in a licensed sex shop
- Possessing for supply elsewhere a video recording of a work classified for supply in a licensed sex shop
- Supplying a video recording, spool, case or other thing of an unclassified work with false classification
- Offer to supply video recording. spool, case or other thing of an unclassified work with false classification

- Supplying a video work, recording, spool, case or other thing which contains a false classification
- Offering to supply a video work, recording, spool, case or other thing contains a false classification
- Being officer of body corporate which has been proved to have committed an offence under the act
- Cruelty to animals
- Doing act resulting in cruelty to animal
- Causing act resulting in cruelty to animal
- Procuring act resulting in cruelty to animal
- Permitting act resulting in cruelty to animal
- Doing act resulting in animal suffering unnecessarily
- Causing act resulting in animal suffering unnecessarily
- Procuring act resulting in animal suffering unnecessarily
- Permitting act resulting in animal suffering unnecessarily
- Omitting to do act thereby resulting in animal suffering unnecessarily
- Causing omission of act thereby resulting in animal suffering unnecessarily
- Procuring omission of act thereby resulting in animal suffering unnecessarily
- Permitting omission of act thereby resulting in animal suffering unnecessarily
- Conveying or carrying animal so as to cause unnecessary suffering
- Causing animal to be conveyed or carried so as to cause unnecessary suffering
- Procuring animal to be conveyed or carried so as to cause unnecessary suffering
- Permitting animal to be conveyed or carried so as to cause unnecessary suffering
- Causing fighting or baiting of animal
- Procuring fighting or baiting of animal
- Assisting at fighting or baiting of animal
- Keeping premises for animal fighting or baiting
- Using premises for animal fighting or baiting
- Managing premises for animal fighting or baiting
- Acting or assisting in managing premises for animal fighting or baiting
- Keeping place for animal fighting or baiting
- Using place (undesignated place or establishment) for animal fighting or baiting
- Managing place for animal fighting or baiting
- Acting or assisting in managing place for animal fighting or baiting
- Causing or procuring omission of act which resulted in animal suffering unnecessarily
- Causing or procuring act which resulted in animal suffering unnecessarily
- Do or cause or procure another to cruelly abuse animal
- Permit premises to be used for animal fighting/baiting
- Owner permitting unnecessary suffering to animal
- Keeping premises or a place for animal fighting or baiting
- Managing premises or a place for animal fighting or baiting
- Using premises or a place for animal fighting or baiting
- Acting or assisting in the management of premises or a place for animal fighting or baiting
- Causing or procuring fighting or baiting of animal
- Received money for admission to

- animal fighting/baiting
- Caused or procured another to receive money for admission to animal fighting/baiting
  - Applying a regulated procedure to an animal not specified in a personal licence
  - Applying a regulated procedure to an animal not specified in a project licence
  - Applying a regulated procedure to an animal in a place other than that specified in the licence
  - Procuring a person to carry out a regulated procedure on an animal not specified in the project licence
  - Permitting a person to carry out a regulated procedure on an animal not specified in the project licence
  - Procuring a person to carry out a regulated procedure on an animal not specified in the person's licence
  - Permitting a person to carry out a regulated procedure on an animal not specified in the persons licence
  - Breeding a schedule 2 animal in regulated procedures in an uncertificated establishment
  - Keeping a schedule 2 animal for supply for use in regulated procedures in an uncertificated establishment
  - Reusing a protected animal after regulated procedures
  - Killing a protected animal by an unauthorised method at the conclusion of regulated procedures
  - Carrying out a regulated procedure on an animal as an exhibition
  - Carrying out a regulated procedure on an animal shown live on television
  - Advertising the carrying out of a regulated procedure on an animal as an exhibition
  - Advertising the carrying out of a regulated procedure on an animal shown live on television
  - Using a neuromuscular blocking agent
- in a regulated procedure on an animal without authorization
  - Using a neuromuscular blocking agent in a regulated procedure on an animal instead of anaesthetic
  - Failing to kill a protected animal when required to do so by an inspector
  - Knowingly furnishing false information to obtain an animals regulated procedures licence
  - Knowingly furnishing misleading information to obtain an animals regulated procedures licence
  - Knowingly furnishing false information to obtain an animal scientific procedure establishment certificate
  - Knowingly furnishing misleading information to obtain animal scientific procedure establishment certificate
  - Recklessly furnishing false information to obtain an animals regulated procedures licence
  - Recklessly furnishing misleading information to obtain an animals regulated procedures licence
  - Recklessly furnishing false information to obtain an animal scientific procedure establishment certificate
  - Recklessly furnishing misleading information to obtain animal scientific procedure establishment certificate
  - Disclosing confidential information about regulated procedures on animals
  - Obstructing constable authorised to investigate animal regulated procedures offences
  - Obstructing inspector accompanying constable authorised to investigate animal regulated procedures offences
  - Refusing to give name and address to constable investigating animal regulated procedures offences
  - Giving false name and address to constable investigating animal regulated procedures offences
  - Cruelty to an animal by abandonment



- Person having charge abandoning animal
- Person having charge procuring abandonment of animal
- Person having charge/ causing abandonment of animal
- Person having charge/permitting abandonment of animal
- Owner abandoning animal
- Owner procuring abandonment of animal
- Owner causing abandonment of animal
- Owner permitting abandonment of animal
- Person having charge causing or procuring animal to be abandoned with unnecessary suffering the result
- Owner causing or procuring animal to be abandoned with unnecessary suffering the result
- Cruelty to badger
- Ill treating badger
- Possession of appliances for use in fighting of domestic fowl rendered unlawful.
- Mutilate kick beat impale stab burn stone crush drown drag asphyxiate a wild mammal w/i to inflict suffering
- Kill maim or wound any animal (except cattle) or bird
- Trade as a pet shop when not licensed to do so
- Failure to comply with the conditions of a pet shop licence
- Carrying on a business of selling animals as pets in a street public place or market
- Selling an animal as a pet to a person under 12 years
- Permitting unnecessary pain or distress to be caused to livestock
- Cause unnecessary pain or distress to any live stock
- Failing to comply with the regulations and codes of recommendation
- Contravention of the act
- Any contravention of the act order of minister or local authority regulation
- Fail to give produce observe or do any notice licence rule or thing which person is required to do
- Obstructing a local authority inspector or constable
- Releasing into the wild animal of kind not normally resident in, or regular visitor to, Great Britain
- Allowing animal of kind not normally resident in, or regular visitor to, Great Britain to escape into wild
- Commit any offence or do anything declared not lawful under act or order by Minister of State made thereunder
- Falsely obtaining a licence - Animal Health Act
- Releasing into the wild schedule 9 part 1 - animal
- Allowing schedule 9, part 1 - animal to escape into the wild
- Intentionally disturb sheltering a schedule 5 wild animal
- Keeping a boarding establishment for animals except under the authority of a licence
- Contravening the provisions of subsection (1)
- Contravene any condition subject to which licence is granted in accordance with the act
- Obstruct or delay any person in exercise of power of entry or inspection under this section
- Using poison for the purpose of destroying any animal in contravention of regulations under the act
- Promote or permit public performance of throwing or casting with ropes any unbroken horse or untrained bull
- Wrestling fighting or struggling with any untrained bull
- Ride any horse or bull using appliance/treatment involving cruelty with intent of making it buck

- Contravening an emergency prohibition order of the food and environment protection act
- Causing another to contravene an emergency prohibition order of the food and environment protection act
- Permitting another to contravene an emergency prohibition order of the food and environment protection act
- Failing to comply with a direction to prevent human consumption of contaminated food
- Causing another to fail to comply with a direction to prevent human consumption of contaminated food
- Permitting another to fail to comply with a direction to prevent human consumption of contaminated food
- Dumping at sea without a licence
- Causing another to dump at sea without a licence
- Permitting another to dump at sea without a licence
- Carrying on a process without complying with conditions of a authority (environmental protection)
- Carrying on process without authority
- Carrying on process without complying with conditions of a granted authority
- Person receiving transfer of authorisation - failing to notify authority (environmental protection)
- Failing to comply with or contravening enforcement notice or prohibition order (environmental protection)
- Failing to provide information to Secretary of State or other authority (environmental protection)
- Knowingly or recklessly making a false or misleading statement (environmental protection)
- Intentionally making a false entry in a record, relating to authorisations (environmental protection)
- Forging a document issued as an authorisation
- Using, with intent to deceive, a document issued as an authorisation (environmental protection)
- Making, with intent to deceive, a document issued as an authorisation (environmental protection)
- Having, with intent to deceive, a document issued as an authorisation (environmental protection)
- Failing to comply with a court order, regarding remedial measures (environmental protection)
- Contravening condition of waste management licence
- Depositing controlled non special waste in or on land without a licence
- Causing the deposition of controlled non special waste in or on land without a licence
- Permitting the deposition of controlled non special waste in or on land without a licence
- Treating controlled non special waste in or on land without a licence
- Causing the treating of controlled non special waste in or on land without a licence
- Permitting the treating of controlled non special waste in or on land without a licence
- Keeping controlled non special waste in or on land without a licence
- Causing the keeping of controlled non special waste in or on land without a licence
- Permitting the keeping of controlled non special waste in or on land without a licence
- Disposing of controlled non special waste in or on land without a licence
- Causing the disposal of controlled non special waste in or on land without a licence
- Permitting the disposal of controlled non special waste in or on land without a licence
- Depositing controlled special waste in or on land without a licence

- Causing the depositing of controlled special waste in or on land without a licence
- Permitting the depositing of controlled special waste in or on land without a licence
- Treating controlled special waste in or on land without a licence
- Causing the treating of controlled special waste in or on land without a licence
- Permitting the treating of controlled special waste in or on land without a licence
- Keeping controlled special waste in or on land without a licence
- Causing the keeping of controlled special waste in or on land without a licence
- Permitting the keeping of controlled special waste in or on land without a licence
- Disposing of controlled special waste in or on land without a licence
- Causing the disposal of controlled special waste in or on land without a licence
- Permitting the disposal of controlled special waste in or on land without a licence
- Treating controlled non special waste in a manner likely to cause pollution or harm to human health
- Keeping controlled non special waste in a manner likely to cause pollution or harm to human health
- Disposing of controlled non special waste in a manner likely to cause pollution or harm to human health
- Treating controlled special waste in a manner likely to cause pollution or harm to human health
- Keeping controlled special waste in a manner likely to cause pollution or harm to human health
- Disposing of controlled special waste in a manner likely to cause pollution or harm to human health
- Suspended licence holder failing to deal with or avert pollution or harm from non special waste
- Suspended licence holder failing to deal with or avert pollution or harm from special waste
- Making false statement in an application concerning a licence (environmental protection)
- Failing to comply with a regulation made by the Secretary of State in relation to special waste
- Obstructing inspector exercising power in respect of article or substance believed hazardous
- Failing to provide information required by waste regulation authority or Secretary of State
- Furnishing false or misleading information to waste regulation authority or Secretary of State
- Importing or acquiring genetically modified organism without notice to the Secretary of State
- Releasing or marketing genetically modified organism without notice to the Secretary of State
- Keeping genetically modified organism without notice to the Secretary of State
- Failing to identify risks of importing or acquiring genetically modified organism
- Importing or acquiring genetically modified organism despite risks of damage to environment
- Failing to take steps to prevent risk of damage to environment as a result of keeping modified organism
- Releasing or marketing modified organism without regard to risk of damage to environment
- Importing or acquiring genetically modified organism without consent
- Releasing or marketing genetically modified organism without consent
- Keeping genetically modified organism without consent

- Failing to keep record of risk assessment (environmental protection)
- Failing to give Secretary of State specified further information about genetically modified organism
- Contravening prohibition notice concerning genetically modified organism
- Failing to comply with requirement of inspector concerning genetically modified organism
- Preventing a person from assisting an inspection (environmental protection)
- Obstructing inspector where no imminent danger is involved (environmental protection)
- Obstructing inspector who believes imminent danger is involved (environmental protection)
- Failing to comply with requirement to provide relevant information (environmental protection)
- Making a false statement concerning genetically modified organism
- Making false entry in required record concerning genetically modified organism
- Unlawfully forging document relating to environmental protection
- Unlawfully using document relating to environmental protection
- Unlawfully making document relating to environmental protection
- Unlawfully processing document relating to environmental protection
- Contravention of a regulation or order relating to factories under the provisions of this act
- Polluting controlled waters
- Causing poisonous, noxious or polluting matter or solid waste to enter controlled waters
- Permitting poisonous, noxious or polluting matter or solid waste to enter controlled waters
- Cause matter to enter controlled waters from discharge from drain or sewer against s. 86 prohibition
- Permitting matter to enter controlled waters from discharge from drain or sewer against s. 86 prohibition
- Causing discharge of trade or sewage effluent into controlled waters
- Permitting discharge of trade or sewage effluent into controlled waters
- Causing discharge of trade or sewage effluent from land through pipe into sea outside seaward limit
- Permitting discharge of trade or sewage effluent from land through pipe into sea outside seaward limit
- Causing discharge of trade or sewage effluent from building or fixed plant against s. 86 prohibition
- Permitting discharge of trade or sewage effluent from building or fixed plant against s. 86 prohibition
- Causing entry of matter into inland fresh waters, which tends to impede its proper flow and cause pollution
- Rendering food injurious to health with intent that it shall be sold for human consumption
- Selling food not complying with food safety requirements
- Selling for human consumption food which fails to comply with food safety requirement
- Offering for sale food for human consumption which fails to comply with food safety requirement
- Exposing for sale food for human consumption which fails to comply with food safety requirement
- Advertising for sale food for human consumption which fails to comply with food safety requirement
- Possessing, for sale, food for human consumption which fails to comply with food safety requirements
- Possessing, for preparation for sale, food which fails to comply with food safety requirements
- Consigning to another, for the purpose of sale, food which fails to comply

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- with food safety requirements
  - Depositing with another for preparation for sale, food which fails to comply with safety requirements
  - Consigning to another, for preparation for sale, food which fails to comply with food safety requirements
  - Contravening requirement of notice under s. 9(3)(a) of Food Safety Act 1990
  - Knowingly contravening emergency prohibition notice
  - Knowingly contravening emergency prohibition order
  - Knowingly contravening emergency control order
  - Failing to comply with directions under s. 13(5) of Food Safety Act 1990
  - Selling food not of the nature, substance or quality demanded by the purchaser
  - Falsely describing or presenting food
  - Giving or displaying with food offered for sale a label falsely describing the food
  - Giving or displaying with food exposed for sale a label falsely describing the food
  - Giving or displaying with food offered for sale a label likely to mislead as to nature, substance or quality
  - Publishing description falsely describing or presenting food
  - Publishing advertisement falsely describing food
  - Being party to publication of advertisement falsely describing food
  - Publishing advertisement likely to mislead as to the nature, substance or quality of food
  - Being party to publication of advertisement likely to mislead as to the nature, substance or quality of food
  - Presentation of food to mislead as to nature substance or quality
  - Selling food the presentation of which is likely to mislead as to its nature, substance or quality
  - Offering for sale food the presentation of which is likely to mislead as to its nature, substance or quality
  - Exposing for sale food the presentation of which is likely to mislead as to its nature, substance or quality
  - Possessing, for sale, food the presentation of which is likely to mislead as to nature, substance or quality
  - Disclosing information food safety
  - Disclosing information in contravention of s. 25(3) of Food Safety Act 1990
  - Authorised officer disclosing information regarding trade secret other than in performance of duty
  - Obstructing person acting in execution of Food Safety Act 1990
  - Failing to give assistance or information to person acting in execution of Food Safety Act 1990
  - Furnishing information - food safety
  - Furnishing information known to be false or misleading in a material particular
  - Recklessly furnishing information which is false or misleading in a material particular
  - Obstructing an authorised person in the execution of his powers under s. 109
  - Failing to comply with an improvement notice
  - Proprietor of food business fail to comply with requirement for food premises for purpose of that business
  - Food handler failing to report medical condition
  - Market or distribute an unsafe product
  - Offer or agree to market any dangerous product or expose or possess any such product for placing
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- on market
- Offer or agree to supply any dangerous product or expose or possess any such product for supply
- Unauthorised dumping
- Sell any fresh horticultural produce of a description in relation to which grades of quality are defined
- Display offer for sale sell deliver or market in any other manner regulated produce against grading rules
- Exposing regulated produce for sale
- Not being the produce thereof has the produce in his possession for sale
- Being the producer thereof consigns the produce for sale
- On behalf of owner of regulated produce sell such produce in circumstances that contravene grading rules
- On behalf of owner of regulated produce intend to carry out sale of regulated produce
- Having given undertaking to any resorting regrading or labelling of regulated produce against grading rules
- Give in relation to regulated product affix incorrect label or description which does not comply to rules
- Affix to container of regulated produce incorrect label for the purposes of s. 13(2)
- Where label under s. 13(2) affixed to regulated produce deface/alter/conceal/remove label w/i to deceive
- Offer regulated produce for which there is prescribed grade price quoted in advert /catalogue/price list
- Dispatch any consignment of regulated produce over 4 metric tons against rule outside EEC
- Obstruct authorised officer acting in execution of this act or in execution of EEC grading rules
- Fail to give authorised officer assistance/information reasonably required under EEC grading rules
- Giving to authorised officer any information which he knows to be false
- Contravene regulations in relation to offshore installation within controlled waters
- Removing or disturbing limestone on designated land
- Carry out /permit operation likely to damage part of area of special scientific interest
- Removing ear tag
- Fail to keep or complete register
- Moves an animal in breach of licence or any condition of the licence
- Fail to produce or supply cattle passport when required to do so
- Fail to report loss of cattle passport to the appropriate minister
- Fail to send cattle passport to appropriate minister on death or theft of animal within 7 days
- Fail to make declaration re dairy quotas
- Fail to ensure all food handled stored packaged displayed transported was protected against contamination
- Fail to ensure that adequate safety procedures are identified implemented maintained and reviewed
- Fail to comply with Article 8(1) re communication of information
- Furnish false/misleading information to obtain whole/part of guarantee section of fund
- Make/sign/false/misleading document to obtain whole/part of guarantee section of fund
- Deliver false misleading document to obtain the whole/part of guarantee section of fund
- Make false/misleading record/register/document to obtain whole/part of guarantee section of fund
- Possess/control any category 1 material and fail to comply with Art. 4(2) of community regulations

- Possess/control any category 2 material and fail to comply with Art. 5(2) of community regulations
- Possess/control any category 3 material and fail comply with Art. 6(2) of community regulations
- Fail comply with Art. 7(1) of community regulations re collection/transport/storage of animal by products
- Feed animal by-product not processed by category 3 plant to a farmed animal
- Allow farmed animal access to animal by-product not processed in approved plant
- Allow farmed animal access to animal by-product not treated in approved biogas/ composting plant
- Allow farmed animal access to animal by-product not applied to land 3 weeks before access
- Bring animal by-product not processed in approved plant on to premises where farmed animal kept
- Bring animal by-product not treated in approved biogas/composting plant on premises where farmed animal kept
- Allow animal access to material in biogas/composting plant
- Use pasture land for grazing by pigs within 2 months of application of fertilizer/soil improver
- Feed farmed animal (not pigs) anything cropped from pasture within 3 wks of applying fertilizer/soil improve
- Operate plant for storage/treatment of animal by-products not approved by community regulations
- Fail to comply with Art. 25(1) re checks on processing and intermediate plant
- Fail to send with samples sent to laboratory info in writing name/address date taken identity
- Tamper with sample taken under regulations sent to laboratory with intent to affect result of test
- Fail to keep record of all results of laboratory tests
- Fail to notify Secretary of State and operator of premises of test result
- Place pet food dog chews technical products on market which do not meet requirements of community regulations
- Fat derivatives produced from category 2 material on market do not meet requirements of community regulation
- Fail to ensure correct labelling of compost/digestion residues for use on agricultural land placed on market
- Operate unauthorised collection centre for purpose of feeding dogs/hounds or maggots
- Fail to comply with Art. 9 Community Regs re records for consigning/transporting/ receiving animal by-product
- Fail to comply with Art. 9 of community regulations re records for burying/ burning animal by-products
- Fail record delivery to biogas/composting plant of details of waste delivered and name/address of haulier
- Operator biogas/composting plant fail to record date/description of all by-product/ catering material treated
- Operator of Reg. 21 Approved laboratory fail to record name/address/date/description of sample taken
- Occupier fail to record date/quantity of compost/digestion residue is brought in/applied to land
- Fail to comply with/contravene a notice served under the regulations
- Obstruct/fail to assist/furnish information to person acting in execution of animal by products regulations
- Driving a motor vehicle with excess alcohol

- In charge of a motor vehicle with excess alcohol
- Failing to provide a specimen of breath
- Fail to cooperate with the provision of a specimen of breath - preliminary test – motor vehicle offence
- Failing to provide a specimen for analysis (driving or attempting to drive)
- Failing to provide a specimen for analysis (being in charge of motor vehicle)
- Dangerous driving
- Physical fitness false declaration when applying for driving licence
- Driving after licence has been refused or revoked on grounds of physical fitness
- Driving a mechanically propelled vehicle while unfit through drink or drugs (drink)
- Driving a mechanically propelled vehicle while unfit through drink or drugs (drugs)
- In charge of a mechanically propelled vehicle whilst unfit through drink or drugs (drink)
- In charge-of mechanically propelled vehicle while unfit through drink or drugs (drugs)
- Attempting to drive mechanically propelled vehicle whilst unfit to drive through drink or drugs
- Attempting to drive mechanically propelled vehicle whilst unfit to drive through drink or drugs (drink)
- Attempting to drive mechanically propelled vehicle whilst unfit to drive through drink or drugs (drugs)
- Attempting to drive with alcohol level above limit
- Obtain a driving licence whilst disqualified
- Failing to stop after accident
- Failing to report accident
- Failing to give name and address after accident
- Fail to consent to analysis of blood specimen
- Breeding or breeding from a dangerous dog
- Breeding fighting dog
- Breeding from fighting dog
- Selling or exchanging a dangerous dog
- Selling fighting dog
- Exchanging fighting dog
- Offering, advertising or exposing a designated dangerous dog for sale or exchange
- Offering fighting dog
- Advertising fighting dog
- Exposing for sale fighting dog
- Offer advertise expose for sale or exchange dog bred for fighting
- Making or offering to make as a gift a designated dangerous dog
- Giving fighting dog
- Offering to give fighting dog
- Advertising or exposing a designated dangerous dog as a gift
- Advertising a designated dangerous dog as a gift
- Exposing a designated dangerous dog as a gift
- Advertise or expose as gift dog of type bred for fighting
- Allowing a designated dangerous dog to be in a public place without muzzle or kept on a lead
- Abandoning or allowing a designated dangerous dog to stray
- Abandoning fighting dog
- Allowing fighting dog to stray
- Dog dangerously out of control - owner's liability
- Dog dangerously out of control injuring a person owner's liability
- Dog dangerously out of control - person in charge liability



- Dog dangerously out of control injuring a
- person - person in charge liability
- Owner allowing a dog to enter a place where injury to the person is caused
- Person in charge of a dog allowing to enter place where injury to the person is caused
- Owner allowing a dog to enter a place, grounds for apprehending, injury to the person may be caused
- Person in charge allowing said dog to enter place, where injury to a person may be caused
- Failing to pay costs for destruction of dog
- Possessing without exemption pit bull terrier, Japanese Tosa or other designated fighting dog
- Allowing dog to be dangerously out of control in public place without injury being caused
- Allowing dog to enter non public place causing reasonable apprehension of injury
- Allowing dog to enter non public place and subsequently cause injury
- Allowing unmuzzled ferocious dog to be at large
- Setting animal/dog to attack, worry or put in fear person or animal
- Setting animal other than dog to attack, worry or put in fear person or animal
- Setting dog to attack, worry or put in fear person or animal
- Unlawfully move aircraft into or out of UK
- Unlawfully import or export goods by pipeline
- Unlawfully import goods by pipeline
- Unlawfully exporting goods by pipeline
- Fail to produce records for inspection at an aerodrome
- Flying to destination outside UK from approved airport without clearance
- Flying to destination outside UK from other than customs and excise airport
- Unlawfully remove or interfere with goods entered for warehousing
- Interfering with denatured goods
- Use or acquire duty-free oil in deliberate contravention of s. 10(1)
- Supply duty-free oil with intent to contravene s. 10(1)
- Allow duty-free oil to be taken into vehicle, appliance or storage tank with intent to contravene s. 10(1)
- Using rebated heavy oil in deliberate contravention of s. 12(2)
- Supply rebated heavy oil with intent to contravene restriction in s. 12(2)
- Knowingly allowing rebated heavy oil to be taken into vehicle with intent to contravene s. 12(2)
- Use or acquire light oil in deliberate contravention of s. 14(2)
- Supply light oil with intent to contravene s. 14(2)
- Allow light oil to be taken into vehicle, appliance or storage tank with intent to contravene s. 14(2)
- Acquiring duty free oil in deliberate contravention of restriction
- Acquiring light oil in a deliberate contravention of restriction
- Fail to search person or property boarding or in proximity to channel tunnel train as specified
- Fail to search channel tunnel train as specified
- Fail to modify or alter channel tunnel train equipment as specified
- Fail to install apparatus or equipment on channel tunnel train as specified
- Concessionaire failing to ensure search of channel tunnel train or tunnel system
- Concessionaire failing to deal with article found in search of tunnel system
- Obstructing search of channel tunnel train or tunnel system by person

- exercising power to search
- Person operating in tunnel system failing to secure search as directed by Secretary of State
  - Person with access to restricted zone failing to secure search as directed by Secretary of State
  - Owner of channel tunnel train failing to secure search as directed by Secretary of State
  - Operator of channel tunnel train failing to secure search as directed by Secretary of State
  - Manager of channel tunnel train failing to secure search as directed by Secretary of State
  - Owner of property used in channel tunnel train/tunnel system failing to secure search as directed
  - Operator of property used in operation of channel tunnel train/system failing to secure search as directed
  - Manager of property used in operating channel tunnel train/tunnel system fail to secure search as directed
  - Other than concessionaire fail to deal with article found in search of channel tunnel train/tunnel system
  - Obstructing search of channel tunnel train or tunnel system by person exercising power under the order
  - Owner failing to comply with direction given under the order
  - Operator failing to comply with direction given under the order
  - Train manager failing to comply with direction given under the order
  - Concessionaire failing to comply with direction given under the order
  - Person operating in tunnel system failing to comply with direction given under the order
  - Person with access to restricted zone failing to comply with direction under the order
  - Owner of property used in tunnel operations failing to comply with directions given under the order
  - Operator of property used in tunnel operations failing to comply with direction given under the order
  - Manager of property used in tunnel operations failing to comply with direction given under the order
  - Owner failing to protect channel tunnel trains against acts of violence
  - Operator failing to protect channel tunnel trains against acts of violence
  - Train manager failing to protect channel tunnel trains against acts of violence
  - Concessionaire failing to protect channel tunnel trains against acts of violence
  - Person operating in tunnel system to protect channel trains in system against acts of violence
  - Person with access to restricted zone failing to protect trains and property against acts of violence
  - Owner of property used in tunnel operations failing to protect said property against acts of violence
  - Operator of property used in tunnel operations failing to protect said property against acts of violence
  - Manager of property used in tunnel operations failing to protect said property from acts of violence
  - Intentionally interfere with building work etc. constructed in compliance with the order
  - Intentionally obstructing authorized person exercising powers
  - Unlicensed person (taxi tout) soliciting persons for hire car services
  - Prohibition of drunkenness in aircraft
  - Acting as air traffic controllers whilst under the influence of drink/drugs
  - Giving liquor to child under 5
  - Causing child under 5 to be given liquor
  - Being drunk and disorderly
  - Being drunk on licensed premises
  - Being drunk on highway

- Being drunk in public place
- Being drunk in charge of carriage horse, cattle or steam engine
- Being drunk in charge of pedal cycle
- Permitting drunkenness or riotous conduct on premises
- Selling liquor to drunk person
- Refusing or failing when drunk to leave licensed premises when requested
- Violent/quarrelsome or disorderly person or other person, refusing to quit licensed premises on request
- Allowing constable to remain on premises when on duty
- Supplying drink to constable on duty
- Being drunk on highway in public place or on licensed premises
- Seaman while on duty under the influence of drink
- Whilst drunk violent quarrelsome or disorderly on licensed premises on request to leave refused to do so
- Entering an aircraft when drunk
- Entering an aircraft when drunk (passenger)
- Being drunk on an aircraft (passenger)
- Member of crew being under influence of drink/drugs
- Member of crew being under influence of drink
- Member of crew being under influence of drugs
- Being carried in aircraft for purpose of acting as member of crew and being under the influence of drink
- Being carried in aircraft for purpose of acting as member of the crew and being under the influence of a drug
- Selling liquor without licence
- Exporting liquor for sale without licence
- Selling etc. intoxicating liquor at place not authorised by licence
- Licence holder (on licence) selling etc. intoxicating liquor to person not permitted by conditions of licence
- Licence holder permitting intoxicating liquor to be consumed on licensed premises by person not permitted
- Being concerned in organising or managing unlicensed public entertainment
- Being concerned in organising or managing unlicensed public musical entertainment
- Allowing place to be used for purpose of unlicensed public entertainment
- Allowing place to be used for purpose of unlicensed public musical entertainment
- Letting or making place available for purpose of unlicensed public entertainment
- Letting or making place available for purpose of unlicensed public musical entertainment
- Drunkenness entering or in an aircraft
- Entered the aircraft when drunk
- Was drunk on the aircraft
- Under influence of drink drugs on aircraft - crew member
- Member of crew being under the influence of drink
- Member of crew being under the influence of drug
- Being carried in aircraft for purpose of acting as crew member and being under influence - drink
- Being carried in aircraft for purpose of acting as crew member and being under influence - drug
- Person other than licensee permit drunkenness/riotous conduct on licensed premises
- Intentional obstruction in enforcement of closure order for premises
- Intentionally obstruct a constable in enforcement of closure order for premises
- Contravene a closure order licensed

- premises
- Do and act to contravene a closure order - licensed premises
  - Allow premises to be used for performance when premises are unlicensed
  - Let premises be used for performance when premises are unlicensed
  - Licence holder allowing premises to be used other than in accordance with terms of licence
  - Licence holder letting premises be used other than in accordance with terms of licence
  - Holder of licence or letters patent for premises in contravention of s. 2
  - Publish advertisement - offer to treat person for cancer/prescribe remedy/ offer advice relating to treatment
  - Publish a tobacco advertisement
  - Cause to be published a tobacco advertisement
  - Printed in the UK a tobacco advertisement
  - Devised in the UK a tobacco advertisement
  - Distributed in the UK a tobacco advertisement
  - Proprietor/editor of a newspaper/ periodical/publication publish in course of business a tobacco advertisement
  - Directly/indirectly procure inclusion of tobacco advertisement in any newspaper/ periodical/other publication
  - Sells/offer for sale a newspaper/ periodical/other publication containing tobacco advertisement
  - Display tobacco products not comply with any requirement of regulations
  - Display tobacco products when display does not comply with any requirement of the regulations
  - Cause display of tobacco products when display does not comply with requirements of regulations
  - Party to sponsorship of promotion of a tobacco product
  - Give away to the public in the UK any product/coupon which promotes a tobacco product
  - Cause to be given away in the UK any product/coupon which promotes a tobacco product
  - Permit to be given away to public in UK any product/coupon which promotes a tobacco product
  - Contravention of regulation made under the act re brand sharing/brand stretching
  - Make a false statement to a duly authorised officer
  - Licensed breeder sell dog not born at licenses breeding establishment
  - Licensed breeder sell dog to licensed shop - no collar with id
  - Licensed breeder sell dog less than 8 weeks old to unlicensed premises
  - Licensed breeder sell dog at unlicensed premises
  - Licensed breeder sell dog - unlicensed premises for resale
  - Street offences
  - Obstruct footway
  - Obstruct footway with awning blind shade etc..
  - Place line/cord/pole across street to cause obstruction to the annoyance of residents or passengers
  - Using profane obscene language in the street
  - Ride horse furiously in the street
  - Driving horse furiously to the obstruction, annoyance or danger of residents and/or passengers
  - Driving carriage furiously to the obstruction. annoyance or danger of residents and/or passengers
  - Causing annoyance by offering for distribution indecent matter in the street
  - Ride carriage furiously in street to the annoyance and danger of passengers

- Throw a firework in the street to the annoyance or danger of passengers
- Drive cattle or other animals furiously to the obstruction/danger/annoyance of residents or passengers
- Leave goods so as to obstruct footway to the obstruction annoyance or danger of passengers or residents
- Expose for sale items so as to obstruct footway to the danger or annoyance of residents or passengers
- Hang items so as to obstruct footway to the danger or annoyance of residents or passengers
- Use items so as to obstruct footway to the annoyance or danger of residents or passengers
- Place goods so as to obstruct footway to the annoyance or danger of residents or passengers
- Place obstruction on footway bench stall etc. to the danger or annoyance of residents or passengers
- Causing annoyance by offering for sale indecent matter
- Keeping a disorderly house - non sexual offence
- Obstruct a person exercising powers of entry and inspection under this act
- Fail to comply with requirement to produce documents or other information as imposed by s. 19(2)
- Unauthorised disclosure of any information obtained in exercise of a power of entry and/or inspection
- Make a statement false in a material particular to the authority
- Make/recklessly make any statement to the authority which was false in a material particular
- Act as gang master without a licence in contravention of section 6
- Possess/control a relevant document knowing/believing it to be false
- Possess/control a relevant document improperly obtained knowing/believing it to be improperly obtained
- Possess/control a relevant document that relates to someone else
- Enter into arrangement with unlicensed gang master to supply workers/services
- Obstruct enforcement/compliance officer in exercise of functions under the act
- Fail to comply with requirement by enforcement/compliance officer in exercise of functions under the act
- Disclosure of information
- Tampering with a safety lamp given out at a mine
- Take or have in possession below ground any cigar/cigarette/pipe for smoking or any match or lighter
- Refuse to allow self or article to be searched
- Contravention of any transport or support or tipping rules having effect with respect to the mine
- Contravene any directions given by management of mine for regulating conduct of all persons employed
- Doing any act in mine likely to endanger health or safety of other persons
- Omit to do any necessary act for securing the health and safety of the mine or persons thereat
- Person not being official remove/alter/tamper with anything provided in mine for health and safety
- Contravention in relation to a mine of a provision of this act or an order made thereunder
- Contravene direction prohibition restriction or requirement imposed under the act by an inspector
- Contravene a condition attached to exemption/consent/approval/authority granted under the act by an inspector
- Contravention of requirement/prohibition imposed under health and safety grounds which applies to all mines
- Engage in conduct licensable under

- the private security industry act  
without such a licence
- Use an unlicensed security operative
  - Occupier of premises use unlicensed wheel damper
  - Make false statement when giving information to enforcement/compliance officer
  - Unauthorised amendment of horse passport
  - Hold more than one passport for any horse at the same time
  - Unauthorised change of name on a horse passport
  - Retention of horse passport by person other than owner/keeper of horse
  - Application for a passport in respect of a horse for which a passport is already issued
  - Deface/obliterate/remove mark applied by local authority inspector to animal/thing for identification
  - Obstruct person acting in execution of regulations
  - Fail to give person acting in execution of regulations any assistance/info re performance of his functions
  - Furnish to person acting in execution of regulations false/misleading information
  - Fail to produce record when required by person acting in execution of regulations
  - Fail to produce record when required by person acting in execution of the regulations
  - Fail to comply with regulation re issue of document purporting to be a horse passport
  - Fail to comply with regulation re requirements on administering veterinary medicinal products to horses
  - Fail to comply with regulation re slaughter of horse for human consumption
  - Fail to comply with requirement to
- notify birth/movement/death of cattle
- Provide false information in any notification
  - Obstruct person acting in execution of cattle data regulations
  - Fail to give person acting in execution of regulations assistance/information
  - Furnish person acting in execution of regulations false or misleading information
  - Showing an indecent exhibition
  - Behaving indecently on police premises
  - Behaving indecently on police premises.
  - Exposure
  - Detaining woman in brothel
  - Brothel keeping
  - Keeping brothel
  - Keeping brothel (homosexual practices)
  - Managing brothel
  - Managing brothel (homosexual practices)
  - Assisting in management of brothel
  - Assisting in management of brothel (homosexual practices)
  - Letting premises for use as brothel
  - Letting premises for use as brothel (homosexual practices)
  - Tenant permitting premises to be used as brothel
  - Permitting premises to be used as brothel - heterosexual
  - Letting premises for use as brothel — homosexual
  - Prostitute soliciting
  - Prostitute - riotous behaviour
  - Prostitute - indecent behaviour
  - Soliciting by man
  - Man soliciting for immoral purposes
  - Man importuning
  - Persistently soliciting a woman for

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- prostitution from a motor vehicle
  - Soliciting a woman for prostitution from a motor vehicle causing her annoyance
  - Soliciting a woman for prostitution from a motor vehicle causing nuisance to other persons
  - Persistently soliciting a woman for prostitution having just left a motor vehicle
  - Soliciting a woman for prostitution having just left a motor vehicle causing her annoyance
  - Soliciting a woman for prostitution having just left a motor vehicle causing nuisance to other persons
  - Persistently soliciting a woman for prostitution
  - Keeping a disorderly house
  - Permitting licensed premises to be habitual resort of prostitutes
  - Permitting licensed premises to be used as brothel
  - Common prostitute behaving in a riotous or indecent manner
  - Man soliciting or importuning for immoral purpose
  - Brothel management
  - Managing or assisting in the management of a brothel
  - Managing or assisting in the management of a homosexual brothel
  - Persistently soliciting woman or women for prostitution
  - Place advertisement relating to prostitution in or in the immediate vicinity of a public telephone box
  - Arrange/facilitate arrival in UK of person believed to exercise control over prostitute in UK/elsewhere
  - Arrange/facilitate travel in UK of person believed to exercise control over prostitutes
  - Arrange/facilitate travel in UK of person in belief subject of 6.145 offence w/i control over prostitutes
  - Arrange/facilitate departure from UK
  - person intending to exercise control over prostitution outside UK
  - Arrange/facilitate departure from UK of person in belief intends to exercise control over prostitution o/s UK
  - Arrange/facilitate arrival in UK of person intending to exercise control over prostitution in UK/elsewhere
  - Keep/manage/act/assist in the management of a brothel used for practices of prostitution
  - Prostitution for gain
  - Cause/incite prostitution for gain
  - Control prostitution for gain
  - Parent fail to ensure young offender attends police station
  - Fail to comply with any requirement imposed by regulations made under s. 86(1)
  - Notify false information
  - Notify police of false information in purported compliance of s. 83(1)
  - Notify police of false information in purported compliance of s. 84(1)
  - Notify police of false information in purported compliance of s. 85(1)
  - Notify police of false information in purported compliance with s. 86(1)
  - Supply false information in purported compliance with notification requirement
  - Supply false information in purported compliance with interim notification requirement
  - Criminal damage
  - Destroying property value in excess of £5000
  - Destroying property value of damage £5000 or less
  - Damage property value in excess of £5000
  - Damage property value of damage £5000 or less
  - Damaging property recklessly
  - Possessing anything w/i to damage property
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- Having articles to destroy property
- Having articles to damage property
- Placing injurious substance in or upon telephone box
- Placing injurious substance in or upon post office letter box
- Threats to damage property
- Threatening to destroy property
- Threatening to damage property
- Removing buoy etc. £20 or over damage
- Causing dangerous occurrence on or over a road
- Dangerous interference with motor vehicle, trailer or cycle
- Dangerous interference with traffic equipment
- Damaging property dedicated to public use
- Malicious damage
- Damage to mines or engines buildings etc. connected therewith
- Destroy or damage property at a value unknown
- Threatening to damage or destroy property
- Having article with intent to damage or destroy property
- Damaging garden
- Damage/obstruct a fire hydrant there as consequence of s. 47(6) use
- Obstructing a constable from prohibiting a person from travelling on board an aircraft
- Obstructing the search for dangerous articles within the confines of an aerodrome.
- Failing to comply with direction requiring security measures for aircraft/aerodrome
- Obstructing person exercising powers for the security of aircraft]aerodrome
- Failing to provide information in relation to ships or harbour areas
- Making a false statement regarding information supplied in relation to ships or harbour areas
- Failing to take required action for security of ships/harbour area
- Failing to comply with a direction to harbour authority, requiring searches in harbour area
- Obstructing search for firearms, explosives or weapons in ship or harbour area
- Failing to comply with a direction requiring searches in harbour area
- Failing to comply with direction requiring security measures for harbour area/ships.
- Interfering with building works or installation for security of harbour area/ships
- Failing to furnish information to a person responsible for security in a harbour area
- Making a false statement to a person responsible for security in a harbour area
- Obstructing authorised person exercising powers for security of ships/harbour areas
- Making a false statement of an occurrence which is required by the Secretary of State
- Fail to comply with direction requiring measures to prevent trespass to aircraft
- Obstruction of entry to aircraft/aerodrome or production/removal of aircraft documents
- Gaining access to aircraft in contravention of a direction issued by the Secretary of State
- On board ship without permission
- Failing to deliver work to a receiver
- Flight for purpose of public transport without an air operators certificate
- Flight in the service of a chief police officer without a police air operators certificate
- Operating an aircraft without valid certificate of airworthiness



- Operators obligation to regulate flight times of flight crews
- Operators obligation not to allow flight by crew in dangerous state of fatigue
- Crews obligation not to fly in dangerous state of fatigue
- Use of false or unauthorised documents or records
- Provision of an air traffic control service without approval
- Air traffic controllers obligation not to act in a dangerous state of fatigue
- Use of aviation fuel which is unfit for use in aircraft
- Restriction of flights for valuable consideration by non UK registered aircraft
- Restriction of flights for aerial photography aerial survey and aerial work by non UK registered aircraft
- Operators or commanders obligation in respect of flights over any foreign country to prejudice of safety
- Flight in contravention of direction not to fly
- Failure of owner of ship to take all reasonable steps to secure ship is operated in a safe manner
- Misconduct of master or crew likely to endanger ships structures or individuals
- Concerted disobedience persistent and wilful neglect of duty or impede progress or navigation of ship
- Master of ship not waiting to save lives in collision
- Master of ship failing to render assistance to ships/aircraft in distress or persons in danger at sea
- Sending unseaworthy ship to sea
- Contravention of regulations passed pursuant to s. 192 (Either way offences)
- Intentional make or assist in making or procure to be made false or fraudulent certificate (load lines)
- Ship entering or remaining in a temporary exclusion zone or part thereof
- Contravention of or failure to comply with a direction to move/remove/not to move a ship
- Breach of regulations relating to submersible and supporting equipment
- Contravention of regulations passed pursuant to s. 192A (summary offences)
- Taking from British waters and selling abroad vessel in distress any cargo or equipment of such or any wreck
- Cause/permit contravention of prohibition notice in respect of ship where trans shipment notice is in force
- Aircraft passenger interfere with performance of crew member
- Owner and master of vessel contravening any provision under regulation 5
- Aircraft passenger interfere with performance by crew member
- Flying aircraft for the purpose of public transport without an air operators certificate
- Flight in the service of chief officer of police without a police air operators certificate
- Flying without a certificate of airworthiness
- Carrying dangerous goods on aircraft
- Operator failing to regulate flight times of flight crew
- Operator failing to prevent flight by crew in dangerous state of fatigue
- Member of aircraft flying in dangerous state of fatigue
- Fail to comply with a requirement of a detention direction in respect of aircraft
- Intentional obstruction of authorised person who has given a detention direction in respect of aircraft
- Fly aircraft too low

- Master/pilot/seaman of ship while on duty ability to carry out duty impaired by drink or drugs
- Master/pilot/seaman in ship on duty - proportion of alcohol in breath/blood/urine exceed proscribed limit
- Seaman not on duty- ability to protect passengers in event of emergency impaired due to drink/drugs
- Seaman not on duty - ability protect passengers in event emergency alcohol in breath/blood/urine exceed limit
- Non professional staff ability to exercise/purport/attempt to navigate ship impaired by drink/drugs
- Non professional staff ability to navigate ship impaired due to alcohol in breath/blood/urine exceed limit
- Performed an aviation function at a time when ability impaired due to drink/drugs
- Carry out activity ancillary to aviation function at time when ability impaired due to drink/drugs
- Perform aviation function when ability impaired due to proportion alcohol in breath/blood/urine exceed limit
- Carry out activity ancillary to aviation function ability impaired alcohol in breath/blood/urine exceed limit
- Adverse occupation of residential premises
- Trespassing on premises with offensive weapon
- Using violence to enter premises
- Threatening violence to enter premises
- Trespassing on diplomatic premises
- Obstructing court officers executing process against unauthorised occupiers
- Trespass
- Trespasser failing to leave land when directed
- Re-entering land as trespasser
- Trespassing on railway board property
- Aid/assist trespassing on railway
- Trespass on land and fail to quit as soon as practicable having been directed to do so by police
- Having left land trespass again within three months of the day direction to leave was given
- Gather on land for the purpose of a rave and fail to quit after being so directed by police
- Having been directed to leave land after gathering for the purpose of a rave return within seven days
- Aggravated trespass on land in the open air to intimidate person partaking in lawful activity
- Aggravated trespass on land in the open air obstructing or disrupting lawful activity
- Aggravated trespass on land in open air having been directed to leave fail to do so as soon as practicable
- Aggravated trespass again on land in the open air within three months of date of direction to leave
- Organise a prohibited assembly on land where the public have no right or limited right of access
- Take part in prohibited assembly on land where the public have no right or limited right of access
- Incite another to take part in prohibited assembly where the public have no right or limited right of access
- Fail to comply with the direction to leave an area where a prohibited gathering is being held
- Being a trespasser and failing to quit premises within 24 hours of interim possession order being made
- Return to premises as a trespasser within one year of date of service of interim possession order
- Attempt to return to premises as a trespasser within one year of date of interim possession order
- Trespass on premises of protected

organization.

- Trespass on private residence of diplomat.
- Forging documents under Road Traffic Act w/i to deceive (specify document)
- Altering documents under Road Traffic Act w/i to deceive (specify document)
- Using documents under Road Traffic Act w/i to deceive (specify document)
- Lending documents under Road Traffic Act w/i to deceive (specify document)
- Allowing use of documents under Road Traffic Act w/i to deceive (specify document)
- Making a false Road Traffic Act document (specify document)
- Possessing false Road Traffic Act document (specify document)
- Forging vehicle excise licence
- Fraudulently altering vehicle excise licence
- Fraudulently using vehicle excise licence
- Fraudulently lending vehicle excise licence
- Fraudulently allowing use of vehicle excise licence
- Forging public service vehicle document w/i to deceive (specify document)
- Forging PSV operator's licence with intent to deceive
- Forging driver's licence with intent to deceive
- Forging road service licence with intent to deceive
- Forging certificate of initial fitness with intent to deceive
- Forging certificate of approval of type vehicle with intent to deceive
- Forging operators disc with intent to deceive
- Forging certificate of qualification with intent to deceive
- Forging document evidencing appointment of person as certifying officer or PSV examiner
- Altering public service vehicle document w/i to deceive (specify document)
- Altering PSV operators licence with intent to deceive
- Altering driver's licence with intent to deceive
- Altering road service licence with intent to deceive
- Altering certificate of initial fitness with intent to deceive
- Altering certificate of approval of type vehicle with intent to deceive
- Altering operator's disc with intent to deceive
- Altering certificate of qualification with intent to deceive
- Altering, document evidencing appointment of person as certifying officer or PSV examiner
- Fraudulently using public service vehicle document with public passenger to deceive (specify document)
- Fraudulently using PSV operator's licence with intent to deceive
- Fraudulently using driver's licence with intent to deceive
- Fraudulently using road service licence with intent to deceive
- Fraudulently using certificate of initial fitness with intent to deceive
- Fraudulently using certificate of approval of type vehicle with intent to deceive
- Fraudulently using operators disc with intent to deceive
- Fraudulently using certificate of qualification with intent to deceive
- Fraudulently using document evidencing appointment of person as certifying officer or PSV examiner
- Lending public service vehicle document w/i to deceive (specify document)
- Lending PSV operators licence with

- intent to deceive
- Lending driver's licence with intent to deceive
- Lending road service licence with intent to deceive
- Lending certificate of initial fitness with intent to deceive
- Lending certificate of approval of type vehicle with intent to deceive
- Lending operators disc with intent to deceive
- Lending certificate of qualification with intent to deceive
- Lending document evidencing appointment of person as certifying officer or PSV examiner
- Allowing use of public service vehicle document w/i to deceive (specify document)
- Allowing use of PSV operator's licence with intent to deceive
- Allowing use of driver's licence with intent to deceive
- Allowing use of road service licence with intent to deceive
- Allowing use of certificate of initial fitness with intent to deceive
- Allowing use of certificate of approval of type vehicle with intent to deceive
- Allowing use of operators disc with intent to deceive
- Allowing use of certificate of qualification with intent to deceive
- Allowing use of document evidencing appointment of person as certifying officer or PSV examiner
- Making false public service vehicle document
- Making false PSV operators licence with intent to deceive
- Making false driver's licence with intent to deceive
- Making false road service licence with intent to deceive
- Making false certificate of initial fitness with intent to deceive
- Making false certificate of approval of type vehicle with intent to deceive
- Making false operators disc with intent to deceive
- Making false certificate of qualification with intent to deceive
- Making false document evidencing appointment of person as certifying officer or PSV examiner
- Possessing false public service vehicle document (specify document)
- Possessing false PSV operators licence with intent to deceive
- Possessing false drivers licence with intent to deceive
- Possessing false road service licence with intent to deceive
- Possessing false certificate of initial fitness with intent to deceive
- Possessing false certificate of approval of type vehicle with intent to deceive
- Possessing false operator's disc with intent to deceive
- Possessing false certificate of qualification with intent to deceive
- Possessing false document evidencing appointment of person as certifying officer or PSV examiner
- Making false statement to obtain a vehicle excise licence
- Forging vehicle registration plates
- Fraudulently altering vehicle registration plates
- Fraudulently using vehicle registration plates
- Fraudulently lending vehicle registration plates
- Fraudulently allowing use of vehicle registration plates
- Forging vehicle trade plates
- Fraudulently altering vehicle trade plates
- Fraudulently using vehicle trade plates
- Fraudulently lending vehicle trade

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| plates  | permit with intent to deceive  |
| ■ Fraudulently allowing use of vehicle plates                       | ■ Making document with intent to deceive (not otherwise coded)                 |
| ■ Forging licence with intent to deceive                            | ■ Possessing licence with intent to deceive                                    |
| ■ Forging insurance document with intent to deceive                 | ■ Possessing insurance document with intent to deceive                         |
| ■ Forging international road haulage permit with intent to deceive  | ■ Possessing international road haulage permit with intent to deceive          |
| ■ Forging document with intent to deceive (not otherwise coded)     | ■ Possessing document with intent to deceive (not otherwise coded)             |
| ■ Altering licence with intent to deceive                           | ■ False statement to obtain document under Road Traffic Act (specify document) |
| ■ Altering insurance document with intent to deceive                | ■ Making a false statement to obtain vehicle licence                           |
| ■ Altering international road haulage permit with intent to deceive | ■ Making false statement to obtain operators licence                           |
| ■ Altering document with intent to deceive (not otherwise coded)    | ■ Make false statement to obtain driving licence                               |
| ■ Using licence with intent to deceive                              | ■ False statement to obtain insurance.   |
| ■ Using insurance document with intent to deceive                   | ■ Make false statement to obtain insurance                                     |
| ■ Using international road haulage permit with intent to deceive    | ■ Withhold information to obtain motor insurance                               |
| ■ Using document with intent to deceive (not otherwise coded)       | ■ Forging any document under Road Traffic Act with intent to deceive           |
| ■ Lending licence with intent to deceive                            | ■ Forges/alters/uses or lends road traffic document with intent to deceive     |
| ■ Lending insurance document with intent to deceive                 | ■ Make false statement to obtain any document under the Road Traffic Act       |
| ■ Lending international road haulage permit with intent to deceive  | ■ Make false declaration to obtain vehicle licence                             |
| ■ Lending document with intent to deceive (not otherwise coded)     | ■ Make false declaration to obtain trade licence                               |
| ■ Allowing licence with intent to deceive                           | ■ Make false declaration to obtain rebate of vehicle excise licence            |
| ■ Allowing insurance document with intent to deceive                | ■ Make false declaration to obtain vehicle registration mark                   |
| ■ Allowing international road haulage permit with intent to deceive | ■ Make a false declaration regarding an exempted vehicle                       |
| ■ Allowing document with intent to deceive (not otherwise coded)    | ■ Furnish false particulars as to vehicle                                      |
| ■ Making false Road Traffic Act document (specify document)         | ■ Furnish false particulars as to keeper of vehicle                            |
| ■ Making licence with intent to deceive                             |  |
| ■ Making insurance document with intent to deceive                  |  |
| ■ Making international road haulage                                 |  |
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- Forging a vehicle licence
- Fraudulently altering a vehicle excise licence
- Fraudulently using a vehicle licence
- Fraudulently lending a vehicle licence
- Fraudulently allowing to use a vehicle licence
- Forging a trade licence
- Fraudulently altering a trade licence
- Fraudulently using a trade licence
- Fraudulently lending a trade licence
- Fraudulently allowing to use a trade licence
- Forging licence issued in respect of exempted vehicle
- Fraudulently altering licence issued in respect of exempted vehicle
- Fraudulently using licence issued in respect of exempted vehicle
- Fraudulently lending licence issued in respect of exempted vehicle
- Fraudulently allowing to use licence issued in respect of exempted vehicle
- Forging a vehicle registration mark
- Fraudulently altering a vehicle registration mark
- Fraudulently using a vehicle registration mark
- Fraudulently lending a vehicle registration mark
- Fraudulently allowing use of a vehicle registration mark
- Forging a vehicle registration document
- Fraudulently altering a vehicle registration document
- Fraudulently using a vehicle registration document
- Fraudulently lending a vehicle registration document
- Fraudulently allowing to use a vehicle registration document
- Forging a trade plate or replacement trade plate
- Fraudulently altering a trade plate or replacement trade plate
- Fraudulently using a trade plate or replacement trade plate
- Fraudulently lending a trade plate or replacement trade plate
- Fraudulently allowing use of trade plate or replacement trade plate
- Making false declaration to obtain vehicle or trade excise licence
- Forging; fraudulently alter use lend to another/allowing to be used by another a registration document
- Forging; fraudulently alter use lend to another/allow to be used by another a registration mark
- Forging; fraudulently alter use lend to another/allow use by another a licence in respect of exempted vehicle
- Forging; fraudulently alter use lend to another/allow to be used by another a vehicle licence
- Forging; fraudulently alter use lend to another/allow to be used by another a trade licence
- Forging a trade plate
- Forging a replacement trade plate
- Fraudulently lent to another a vehicle licence/trade licence/registration mark/registration document
- Fraudulently alter vehicle licence/trade licence/registration mark/registration document
- Forging a vehicle licence/trade licence/registration mark/registration document
- Fraudulently allow use by another of vehicle licence/trade licence/registration mark/registration document
- Fraudulently use vehicle licence/trade licence/registration mark/registration document
- Using a document (goods vehicle)
- Altering a document (goods vehicle)
- Forge/fraudulently alter/use/lend/allow/use voucher issued in respect

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| of vehicle   | in book/registration document   |
| ■ Forge voucher issued in respect of vehicle   | ■ Making implement capable of imparting resemblance of side of coin                       |
| ■ Fraudulently alter voucher issued in respect of vehicle  | ■ Making implement capable of imparting resemblance of a reverse of image on side of coin |
| ■ Fraudulently use voucher issued in respect of vehicle  | ■ Possessing equipment for counterfeiting coin  |
| ■ Fraudulently lent voucher issued in respect of vehicle   | ■ Having implement capable of imparting resemblance of side of coin                       |
| ■ Fraudulently allow voucher issued in respect of vehicle to be used by another person                     | ■ Having implement capable of imparting resemblance of reverse of image on side of coin   |
| ■ False declaration to obtain voucher or refund on voucher issued in respect of vehicle                    | ■ Selling/distributing imitation British coins to promote sales                           |
| ■ False declaration to secure possession of removed vehicle  | ■ Distributing imitation British coin   |
| ■ False declaration to release immobilisation device   | ■ Gilding coins   |
| ■ Made an operators licence document plate or mark by which a vehicle is identified with intent to deceive | ■ Silvering coins   |
| ■ Possess a document or thing resembling a licence document plate or mark with intent to deceive           | ■ Silvering metal   |
| ■ Make a consignment note which you know to be false   | ■ Filing coins  |
| ■ Cause a false consignment note to be made  | ■ Filing metal  |
| ■ Alter a consignment note   | ■ Lightening coins  |
| ■ Cause a consignment note to be altered   | ■ Lightening metal  |
| ■ Forging a document (goods vehicle)   | ■ Possessing gold filed from coins  |
| ■ Lending document to another (goods vehicle)  | ■ Possessing silver filed from coins  |
| ■ Allowing document to be used by another (goods vehicle)  | ■ Defacing coins  |
| ■ Forge alter use lend any licence/ identification mark or registration book                               | ■ Making items resembling coins   |
| ■ Test certificate false instrument  | ■ Possessing items resembling coins   |
| ■ Aid abet false instrument made outside the UK  | ■ Making coining implements   |
| ■ Knowingly make false entry in a book/registration document   | ■ Mending coining implements  |
| ■ Cause to knowingly make false entry  | ■ Possessing coining implements   |
|  | ■ Removing tools from mint  |
|  | ■ Removing coins from mint  |
|  | ■ Removing metal from mint  |
|  | ■ Melting coins without a licence   |
|  | ■ Breaking coins without a licence  |
|  | ■ Uttering forged document  |
|  | ■ Uttering forged seal  |
|  | ■ Uttering forged die   |
|  | ■ Uttering defaced coin   |
|  | ■ Uttering counterfeit coin   |

- Uttering counterfeit gold coin
- Uttering counterfeit silver coins
- Possessing 3 or more counterfeit gold coins w/i to utter
- Possessing 3 or more counterfeit silver coins w/i to utter
- Uttering counterfeit copper coin
- Possessing counterfeit copper coin
- Uttering coin as one of higher denomination
- Uttering medal resembling current coin
- Uttering metal resembling current coin
- Uttering false cremation certificate
- Making false statement to obtain passport
- Issuing misleading statement regarding share allotment
- Making false statement regarding valuation of company
- Director permitting company to make unlawful loans
- Insider dealing on stock exchange
- Insider dealing by crown servant
- Authorising issue of false prospectus
- Undischarged bankrupt involved in management of company
- Breach of court order prohibiting from being director
- Failing to give up company's property to director
- Failing to give up company's records to director
- Falsification of records by officer of company
- Officer of company in liquidation disposing of assets
- Officer of wound up company not having kept proper records
- Trading w/i to defraud creditors
- Undischarged bankrupt acting as receiver
- Fraudulent issue of money order by post office employee
- Fraudulent retention of mail
- Fraudulently retaining, secreting or detaining postal packet which is in the course of transmission
- Fraudulently retaining, secreting or detaining postal packet which has been found
- Fraudulently retaining mailbag
- Interfering with mail
- Unlawfully opening postal packet
- Impeding delivery of postal packet
- Dishonestly using telecommunications system
- Unlawfully taking deposit
- Furnishing false information to obtain banking licence
- Unlawfully advertising to invite deposits
- Fraudulently inducing deposits
- Fraudulently inducing person to invest on deposit
- Unlawfully advertising to invite deposit
- Falsification of accounts by deposit holder
- False accounting or furnishing false information relating to accounts
- False accounting
- Furnishing false information relating to accounts
- False statements by company officer
- Conspiracy to defraud
- Making false representation to procure cremation
- Making false statement to obtain accommodation
- Making false statement to obtain benefit
- Making false representation to obtain benefit
- Making false statement to obtain social security
- Making false statement to obtain legal aid



- Making false statement to obtain family income supplement
- Making false statement to obtain supplementary benefit
- Making false representation to obtain benefit from national insurance fund
- Fraudulently claiming child benefit
- Persistently refusing to maintain self
- Persistently refusing to maintain dependants
- Persistently neglecting to maintain self
- Persistently neglecting to maintain dependants
- Carrying on insurance business without authorisation
- Furnishing false information to obtain issue of authorisation to operate an insurance business
- Being an officer of a company which illegally acquires its own shares
- Giving financial assistance for share acquisition
- Giving financial assistance for reducing liability
- Making statutory declaration without having reasonable grounds for opinion expressed
- Making payment for redemption of own shares
- Making payment for purchase of own shares
- Failing to notify interest in shares to company
- Making false statement in purported fulfilment of obligation to notify company
- Failing to give notice to another party
- Failing to secure agent's notification
- Failing to provide information as to interest in shares.
- Disqualified person managing company
- Dishonestly using licensed telecommunications system
- Making false statement for any purpose connected with a benefit act (specify act)
- Making false representation for any purpose connected with a benefit act (specify act)
- Producing false document for any purpose connected with a benefit act (specify act)
- Producing false information for any purpose connected with a benefit act (specify act)
- Furnishing false document for any purpose connected with a benefit act (specify act)
- Furnishing false information for any purpose connected with a benefit act (specify act)
- Knowingly allow false document to be produced for any purpose connected with a benefit act (specify act)
- Knowingly allow false information to be produced for any purpose connected with a benefit act (specify act)
- Knowingly allow false document to be furnished for any purpose connected with a benefit act (specify act)
- Knowingly allow false information to be furnished for any purpose connected with a benefit act (specify act)
- Knowingly · cause false information to be produced or for purpose connected with a benefit act (specify act)
- Knowingly cause false document to be furnished for any purpose connected with a benefit act (specify act)
- Knowingly cause false information to be furnished for any purpose connected with a benefit act (specify act)
- Intentionally failing to comply with as to the information to be furnished to obtain legal id.
- Making false statement to obtain legal aid.

- Making false representation to obtain legal aid.
- Receives benefit document as a pledge or security for a debt.
- Detains benefit document as a pledge or security for a debt.
- Possess benefit document as a pledge or security for a debt.
- Receives benefit document w/i to obtain from the person entitled payment for a debt to any person.
- Detains benefit document w/i to obtain from the person entitled payment for a debt to any person.
- Possess benefit document w/i to obtain from the person entitled payment for a debt to any person.
- Possess without lawful authority or excuse benefit document.
- Suppressing deeds or evidence relating to land registration
- Fraudulently entering onto, erasing from or altering register of title, of land or charge certificate
- Failing to comply with requirement of the director of the serious fraud office
- Making a false or misleading statement to the director of the serious fraud office
- Causing falsification of documents relevant to a complex or serious fraud investigation
- Making a false statement or representation in order to obtain benefit or payment
- Falsely producing any document or information to obtain benefit or payment
- Falsely furnishing any document or information to obtain benefit or payment
- Causing production of false document or information to obtain benefit or payment
- Causing the furnishing of false document or information to obtain benefit or payment
- Allowing production of false document or information to obtain benefit or payment
- Allowing the furnishing of any document or information to obtain benefit or payment
- Buying a contribution card or used contribution stamp
- Selling a contribution card or used contribution stamp
- Offering for sale a contribution card or used contribution stamp
- Taking in exchange a contribution card or used contribution stamp
- Giving in exchange a contribution card or used contribution stamp
- Unlawfully pawning a contribution card or used contribution stamp
- Unlawfully taking in pawn a contribution card or used contribution stamp
- Unlawfully affixing used contribution stamp to a contribution card
- Unauthorised disclosure of information by social security employee or ex-employee
- Unauthorised disclosure of information by ex-social security investigator or auditor
- Unlawful possession of social security document for debt security or pledge
- Unlawful possession of social security document for obtaining unlawful payment
- Unlawful possession of social security document
- Convicted offender knowingly furnishing false statement of means
- Convicted offender recklessly furnishing false statement of means
- Convicted offender failing to disclose material fact in statement of means
- Embezzlement
- Fraudulent conversion
- Intent to defraud as trustee
- Obtaining credit by fraud
- Fraudulently ship dutiable or

restricted goods for export without required prior entry

- Taking dutiable or restricted goods on exporting ship with fraudulent intent
- Loading dutiable or restricted goods into aircraft without authorisation and with fraudulent intent
- Being knowingly concerned in fraudulently evading agricultural levy chargeable on exportation of goods
- Make false claim for drawback, allowances etc. with fraudulent intent
- Remove imported goods before examination with intent to defraud or to evade prohibition or restriction
- Make false statement to obtain benefit
- Being knowingly concerned in the fraudulent evasion of vat
- Making a false vat return
- Making a false statement
- Behave in a way indicating commission of offence under the act
- Making a false statement in relation to vat
- Conduct indicating offence(s) under this act whether or not the particulars of the offence(s) are known
- Fail to furnish information when required to do so by the Secretary of State
- Knowingly or recklessly furnish false information to the Secretary of State
- Fail to supply information to inspector
- Knowingly or recklessly supply false information to inspector
- Make false statement to obtain banking licence
- Falsely indicate entitlement to accept deposit
- Issue an advertisement which fails to comply with banking act regulations
- Issue an advertisement which is prohibited under the directions of the banking act
- Issue an advertisement which fails

to comply with the directions made under the banking act

- Contravene the regulations on making unsolicited calls to procure deposits
- Make a fraudulent inducement to make deposit
- Make fraudulent inducement to refrain from making a deposit
- Make fraudulent inducement to enter into agreement to make deposit
- Make fraudulent inducement to refrain from entering into agreement to make deposit
- Failing to give written notice of a change of director controller or manager
- Person failing to give notice of becoming a significant share holder
- Failing to report as required by s. 38 of the banking act
- Fail to comply with requirements to supply information or production of documents
- Obstruct agent of bank exercising right of entry
- Fail to produce documents to bank investigator
- Fail to appear before bank investigator
- Fail to answer questions put by bank investigator
- Obstruct a bank investigator
- Person suspected of committing an offence fail to comply with requirements of bank investigator
- Person suspected of committing an offence wilfully obstructing bank investigator
- Intentionally obstruct the exercise of right conferred by a warrant issued under s. 43 Banking act
- Person named in warrant failing to comply with requirements imposed by the act
- Obstructing an investigation
- Fail to keep copy of most recent audited accounts

- Fail to make most recent audited accounts available for inspection
- Fail to comply with provisions regarding notification in respect of auditors
- Contravene the provisions of the act relating to banking names and descriptions
- Disclosing restricted information
- Provide false or misleading information in connection with requirements under the banking act
- Provide false or misleading information in connection with application for authorization
- Fail to provide the bank with information
- Provide false or misleading information to a bank investigator
- Person charged with offence make false statement of financial circumstances
- Person charged with offence recklessly furnishing false statement of financial circumstances
- Person charged with offence failing to disclose material fact in statement of financial circumstances
- Acting with intent to prejudice her majesty the queen and the public revenue with intent to defraud
- Making false statement to prejudice her majesty the queen and the public revenue with intent to defraud
- Knowingly or recklessly giving false information
- Engaging in activity requiring a licence, when not a licensee
- Carrying on a business under name not specified in licence
- Failing to notify change in registered particular
- Advertising credit where goods etc. are not available for cash
- Issuing false or misleading advertisement
- Canvassing debtor-creditor agreement off trade premises
- Soliciting debtor-creditor agreement during visit made in response to previous oral request
- Sending circular to minor
- Supplying unsolicited credit token
- Taking pledge from minor
- Canvassing ancillary credit service off trade premises
- Impersonating enforcement authority officer
- Giving false information to enforcement authority officer
- Contravening regulation made under ss. 44, 52, 53, 54 or 112
- Wrongfully disclosing information
- Make statement or representation known to be false
- Produce or furnish any document or information known to be false in a material particular
- Supply/offer thing for fraudulent use of telecom system
- Supply thing for fraudulent use of telecom system
- Offer to supply thing for fraudulent use of telecom system
- Possess thing for fraudulent use of telecom system
- Official/agent of trade union making or privy to making of false entry in a document mentioned in s. 45(7)(a)
- Official/agent destroy/mutilate/falsify or privy to destruction of document re financial affairs of union
- Fraudulently parts with alters or deletes anything in such a document mentioned in s. 45(7)(a)
- Fraudulently privy to parting alteration or deletion of document mentioned in s. 45(7)(a)
- Make statement knowing it to be false in purported compliance with a duty or requirement under s. 37A or B
- Recklessly provide or make false statement in purported compliance

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| <p>with duty imposed under s. 37A or B</p> <ul style="list-style-type: none"> <li>■ Making dishonest representation to obtain benefit</li> <li>■ Owner or master of ship knowingly making false or misleading entry in oil record book</li> <li>■ Failing to keep proper company books</li> <li>■ Offer to provide flight accommodation without lawful entitlement</li> <li>■ Purporting to act as a trustee of an occupational pension scheme whilst disqualified</li> <li>■ Supplying false or misleading information to charity commissioners</li> <li>■ Make false statement or recklessly make false statement in providing information required by notice</li> <li>■ Produce document which has been wilfully falsified to his knowledge for examination in accordance with notice</li> <li>■ Deduct contributions for pension scheme and fail to pay to trustee of scheme within prescribed period</li> <li>■ Commit offence with consent connivance or neglect by body corporate</li> <li>■ Producing/furnishing any false document/information</li> <li>■ Causing/allowing any false document/information to be produced/furnished</li> <li>■ Knowingly fraudulently evading contributions which he or any other person is liable</li> <li>■ Fail to notify a change of circumstances required by regulations under the act</li> <li>■ Alter/cause to alter document required w/i to falsify the document or enable trade union to evade provisions</li> <li>■ Contravene duty or requirement imposed under s. 37A or s. 37B</li> <li>■ Making false representation or fraud for purpose of obtaining creditors' consent to proposal</li> <li>■ Make/possess w/i to deceive parking device any ticket certificate permits or</li> </ul> | <p>tokens</p> <ul style="list-style-type: none"> <li>■ Use parking device with intent to deceive</li> <li>■ Use parking ticket with intent to deceive</li> <li>■ Use certificate means of identification or device with intent to deceive</li> <li>■ Use parking permit or token with intent to deceive</li> <li>■ Make/possess parking device with intent to deceive</li> <li>■ Make/possess parking ticket with intent to deceive</li> <li>■ Make/possess parking permit or token with intent to deceive</li> <li>■ Make/possess certificate/id/device with intent to deceive</li> <li>■ Interfere with charging equipment obscure registration plate w/i to avoid payment under charging scheme</li> <li>■ Cause/permit registration plate to be obscured w/i to avoid payment of charge under charging scheme</li> <li>■ Interfere with equipment used in charging scheme with intent to avoid payment</li> <li>■ Causing or allowing another person to fail to notify change of circumstances</li> <li>■ Fail to notify change of circumstances under the act</li> <li>■ Cause/allow another to fail to notify change of circumstances</li> <li>■ Furnish false information for the purpose of application for permit to conduct charitable collection</li> <li>■ Provide charity commissioners with information which is false/misleading in material particular</li> <li>■ Use an altered registration card with intent to deceive</li> <li>■ Attempt to use altered registration card with intent to deceive</li> <li>■ Falsification of accounts</li> <li>■ Being concerned in fraudulent activity undertaken with view to obtain payment of tax credit by any person</li> </ul> |
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- Fraudulent evasion of payment of income tax
- Concerned in fraudulent evasion of direct payment arrangements
- Do act/omission as a result injured/ill purpose to obtain award/contribution/sum through scheme under s. 34
- Fraudulent evasion of contributions
- Bankrupt failing to disclose income
- Bankrupt failing to disclose property
- Bankrupt obtaining credit without disclosing bankruptcy
- Bankrupt disposing of assets w/i to defraud creditors
- Contributing to bankruptcy by gambling
- Contributing to bankruptcy by speculating
- Bankrupt failing to keep proper accounts
- Bankrupt absconding from England with property
- Undischarged bankrupt acting as manager
- Bankrupt failing to disclose/dispose of property
- Bankrupt fail to disclose disposal of property
- Bankrupt concealing property
- Bankrupt failing to deliver up property
- Bankrupt concealing/alter/dispose of records relating to estate/affairs
- Bankrupt failing to deliver up documents to official receiver
- Bankrupt preventing production of documents relating to own estate or affairs
- Bankrupt concealing information of books and papers
- Bankrupt making false entry in document
- Bankrupt causing concealment of document relating to own estate or affairs.
- Bankrupt permitting concealment of document relating to own estate or affairs
- Bankrupt destroying document relating to own estate or affairs.
- Bankrupt causing destruction of document relating to own estate or affairs.
- Bankrupt permitting destruction of document relating to own estate or affairs
- Bankrupt mutilating document relating to own estate or affairs.
- Bankrupt causing mutilation of document relating to own estate or affairs.
- Bankrupt permitting mutilation of document relating to own estate or affairs.
- Bankrupt falsifying documents relating to own estate or affairs.
- Bankrupt causing falsification of document relating to own estate or affairs.
- Bankrupt permitting falsification of document relating to own estate or affairs.
- Bankrupt causing false entry to be made in document.
- Bankrupt permitting false entry to be made in document.
- Bankrupt disposing of books, papers or other records relating to own estate or affairs.
- Bankrupt altering books, papers or other records relating to own estate or affairs.
- Bankrupt conceal/destroy records relating to estate or affairs
- Bankrupt cause concealment/destruction of records relating to estate or affairs
- Bankrupt permit concealment/destruction of records relating to estate or affairs
- Bankrupt cause concealment/destruction of books relating to estate or affairs

- Bankrupt permit concealment/ destruction of books relating to estate or affairs
- Bankrupt cause mutilation of books relating to estate or affairs
- Bankrupt permit mutilation of books relating to estate or affairs
- Bankrupt cause falsification of books relating to estate or affairs
- Bankrupt permit falsification of books relating to estate or affairs
- Bankrupt make false entry in records relating to estate or affairs
- Bankrupt cause false entry in records relating to estate or affairs
- Bankrupt permit making false entry in records relating to estate or affairs
- Bankrupt make omission in records relating to estate or affairs
- Bankrupt permit disposal of records relating to estate or affairs
- Bankrupt altering records relating to estate or affairs
- Bankrupt making omission in records relating to estate or affairs
- Bankrupt dispose of records relating to estate or affairs
- Bankrupt alter records relating to estate or affairs
- Bankrupt cause disposal of records relating to estate or affairs
- Bankrupt permitting disposal of records relating to estate or affairs
- Bankrupt cause alteration to records relating to estate or affairs
- Bankrupt permitting alteration to records relating to estate or affairs
- Bankrupt permitting omission in records relating to estate or affairs
- Bankrupt conceal/destroy records relating to own estate or affairs before going into bankruptcy
- Bankrupt mutilate records relating to own estate or affairs before going into bankruptcy
- Bankrupt falsity records relating to own estate or affairs before going into bankruptcy
- Bankrupt permitting disposal of document relating to his estate or affairs
- Bankrupt permitting alteration to a document relating to his estate or affairs
- Bankrupt permitting making of an omission in a document relating to his estate or affairs
- Bankrupt making a gift charge or transfer of property
- Bankrupt making false statement/ fraud to creditors
- Bankrupt making material omission in statement
- Bankrupt failing to notify trustee that false debt has been proved
- Bankrupt attempting to account for part of property by fictitious loss or expense
- Bankrupt doing the equivalent of attempting to account for property by fictitious loss or expense at meeting
- Bankrupt making false representation to obtain consent of creditor to agreement regarding bankruptcy
- Bankrupt committing a fraud on creditors
- Bankrupt disposing assets
- Bankrupt making gift or transfer of, or charge on, own property in the period of 5 years
- Bankrupt causing gift or transfer of, or charge on, own property to be made in the period of 5 years
- Bankrupt concealing or removing part of own property before commencement of bankruptcy
- Bankrupt absconding with property
- Bankrupt attempting to abscond with property
- Bankrupt doing equivalent of absconding or attempting to abscond with property before bankruptcy
- Bankrupt disposing of property

- obtained on credit
- Receiving property obtained on credit from bankrupt
- Bankrupt engaging in business under another name
- Bankrupt failing to keep proper accounting records
- Bankrupt failing to preserve all accounting records
- Contributing to bankruptcy by gambling or speculating
- Lose part of property by gambling or speculating
- Conceal property before bankruptcy
- Conceal debt before bankruptcy
- Bankrupt conceal debt
- Bankrupt remove property
- Bankrupt failing to account for loss of substantial part of property
- Bankrupt making gift/transfer/charge on property
- Bankrupt cause to be made gift/transfer/charge on property
- Bankrupt cause the levying of an execution against property
- Bankrupt connive at the levying of an execution against property
- Bankrupt conceal/remove property after judgement/order
- Bankrupt conceal/remove property two months before judgement/order
- Bankrupt before bankruptcy conceal/remove property after judgement/order
- Bankrupt before bankruptcy conceal/remove property two months before judgement/order
- Bankrupt leave/attempt to leave jurisdiction with property
- Undischarged bankrupt acting as a director
- Undischarged bankrupt taking part in or being concerned in the promotion formation or management of a company
- Falsely account for losses before bankruptcy
- Obtaining property by deception
- Obtain a money transfer by deception
- Obtaining pecuniary advantage by deception
- Obtain a pecuniary advantage by deception for another
- Destroying wills
- Concealing wills
- Defacing wills
- Destroying documents
- Concealing documents
- Defacing documents
- Procuring execution of valuable security by deception
- Obtaining services by deception
- Obtaining service by deception (except railway fraud)
- Obtaining service by deception (railway fraud)
- Securing remission of liability by deception
- Securing remission of liability by deception (except railway fraud)
- Securing remission of liability by deception (railway fraud)
- Deception w/i to default permanently on liability
- Inducing creditor to wait for payment by deception (except railway fraud)
- Inducing creditor to wait for payment by deception (railway fraud)
- Obtaining exemption from liability by deception
- Obtaining exemption from liability by deception (except railway fraud)
- Obtaining exemption from liability by deception (railway fraud)
- Obtaining reduction of liability by deception
- Obtaining reduction of liability by deception (except railway fraud)
- Obtaining reduction of liability by



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- deception (railway fraud)
  - False claim of nursing qualification
  - Selling goods advertised as made by blind persons while not registered
  - Selling goods advertised as made by disabled persons while not registered
  - Selling goods advertised as sold for benefit of blind persons while not registered
  - Selling goods advertised as sold for benefit of disabled persons while not registered
  - False pretences
  - Knowingly or recklessly make false written statement about protected intended occupier status
  - Knowingly make false written statement in civil proceedings to obtain interim possession order
  - Recklessly make false written statement in civil proceedings to obtain interim possession order
  - Knowingly make false written statement in civil proceedings to prevent or resist interim possession order
  - Recklessly make false written statement in civil proceedings to prevent or resist interim possession order
  - Falsely pretending with intent to deceive to be a wildlife inspector
  - False representations to nursing/midwifery qualifications
  - Falsely represent self to be registered in register or part of it or subject of any entry in register
  - Use title referred to Article 6(2) to which he is not entitled
  - Falsely represent self to possess qualifications in nursing/midwifery
  - Soliciting bribe
  - Receiving bribe
  - Agent accepting bribe
  - Agent agreeing to accept bribe
  - Offering bribe to agent
  - Giving bribe to agent
  - Giving document containing false statement to agent
  - Agent using document containing false information
  - Giving bribe
  - Offering a bribe
  - Promising bribe
  - Corruptly taking a reward
  - Assist another to use proceeds of criminal conduct.
  - Assisting another to retain or control benefit of criminal conduct
  - Acquire proceeds of criminal conduct.
  - Possess proceeds of criminal conduct.
  - Use proceeds of criminal conduct.
  - Conceal proceeds of criminal conduct to retain them or to avoid prosecution.
  - Convert property to retain proceeds of criminal conduct or to avoid prosecution.
  - Transfer property to retain proceeds of criminal conduct or to avoid prosecution.
  - Remove property from courts jurisdiction to retain proceeds of criminal conduct or avoid prosecution.
  - Conceal property of another to assist them retain proceeds of criminal conduct or avoid prosecution.
  - Disguise property of another to assist them retain proceeds of criminal conduct or avoid prosecution.
  - Convert property of another to assist them retain proceeds of criminal conduct or avoid prosecution.
  - Transfer property of another to assist them retain proceeds of crime or avoid prosecution.
  - Remove property of another from jurisdiction to assist to retain proceeds of crime or avoid prosecution.
  - Give tip-off likely to prejudice money
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- laundering operation.
- Give tip-off likely to prejudice money laundering investigation after disclosure made to constable.
  - Give tip-off likely to prejudice money laundering operation, disclosure made in course of employment.
  - Bribing constable
  - Agreeing to bribe agent
  - Agent obtaining bribe
  - Fraudulent evasion of customs duty
  - Making, signing or delivering an untrue declaration to avoid payment of customs duty
  - Causing an untrue declaration to avoid payment of customs duty to be made signed or delivered
  - Import magazines of indecent and obscene nature
  - Causing to be delivered to a customs officer a fraudulent invoice
  - Fraudulent evasion of the prohibition on importation of drugs
  - Fraudulent evasion of duty chargeable on goods
  - Acquire relieved goods for own use or purpose contrary to condition upon which relief was granted
  - Acquire relieved goods for use by or for purpose of another, contrary to condition upon which relief was granted
  - Cause relieved goods to be used by another for purpose contrary to condition upon which relief was granted
  - Permit relieved goods to be used by another for purpose con. to condition upon which relief was granted
  - Making false statement concerning relief from customs duty
  - Exporting restricted goods
  - Exporting prohibited goods
  - Knowingly or recklessly making a false statement to obtain a permit or certificate
  - Knowingly or recklessly furnishing a false document
  - Knowingly or recklessly using or furnishing false permit/certificate or one altered without authorisation
  - Knowingly or recklessly making a false import notification
  - Knowingly falsifying or altering a permit or certificate
  - Using a permit certificate or import notification for any specimen other than that for which it was issued
  - Use specimen of species in Annex A not in accordance with authorisation given at issue of import permit
  - Contravene condition of permit/certificate issued in accordance with principal/ subsidiary regulation
  - Cause/permit specimen to be transferred from authorised address without authority of Secretary of State
  - Keep specimen at premises other than specified address without prior authority of Secretary of State
  - Purchase/acquire/display/use/sell/offer for commercial purpose or gain any specimen listed in Annex A
  - Purchase/display/use/sell/offer for commercial purpose specimen in Annex B imported/acquired unlawfully
  - Furnishing or recklessly furnishing a false statement for the purposes of s. 8(6)
  - intentionally obstruct an authorised person acting in accordance with powers conferred by this regulation
  - Pretend to be an authorised person with intent to deceive
  - Prohibited import or export of any live or dead animal to which schedule one of this act refers
  - Prohibited import or export of any live or dead plant to which schedule two of this act refers
  - Prohibited import or export of any item to which schedule three of the act refers
  - For the purpose of obtaining licence

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- under the act make statement or representation he knows to be false
  - For the purpose of obtaining a licence under the act furnish document or information he knows to be false
  - For the purpose of obtaining a licence under the act recklessly make statement/ representation which is false
  - For the purpose of obtaining a licence under the act recklessly furnish document/ information which is false
  - Sell offer or expose for sale possess transport for sale or display any thing imported contrary to the act
  - Sell offer expose possess transport for sale/display anything wholly or partly made from import cont. to the act
  - Sell offer expose possess or transport for sale any live/dead animal contained in schedule four of the act
  - Sell offer expose possess transport for sale any live or dead plant contained in schedule five of the act
  - Sell offer expose possess or transport for sale any part of or made from any thing in schedules 4 and 5
  - Furnish/recklessly furnish certificate for restricted article knowing it to be false in material particular
  - Make false statement/representation for permit/certificate
  - Make false statement for permit
  - Make false statement to obtain certificate
  - Make false representation to obtain permit
  - Make false representation to obtain certificate
  - Furnish false document/information to obtain permit/certificate
  - Furnish false document to obtain permit
  - Furnish false information to obtain permit
  - Furnish false document to obtain certificate
  - Furnish false information to obtain a certificate
  - Use or furnish false/falsified/invalid/unlawfully altered permit or certificate
  - Use false/falsified/invalid/unlawfully altered permit
  - Use false/falsified/invalid/unlawfully altered certificate
  - Furnish false/falsified/invalid/unlawfully altered permit
  - Furnish false/falsified/invalid/unlawfully altered certificate
  - Falsify/alter a permit/certificate
  - Falsify a permit
  - Falsify a certificate
  - Altering a permit
  - Altering a certificate
  - Use permit/certificate for specimen other than issue
  - Using permit for specimen other than that for which permit was issued
  - Using certificate for specimen other than that for which certificate was issued
  - Using import notification for specimen other than that for which the import notification was issued
  - Fail to comply with permit/certificate
  - Fail to comply with permit
  - Fail to comply with certificate
  - Movement of live specimens - fail to keep at specified address
  - Cause specimen to be transferred from the address specified on import permit
  - Cause specimen to be transferred from the address specified on certificate
  - Permit specimen to be transferred from address on import permit
  - Permit specimen to be transferred from address specified on certificate
  - Kept a specimen at premises other
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- than the specified address on import permit
  - Kept a specimen at premises other than specified address on certificate
  - Prohibited purchase/sale etc. of specimen listed in Annex A
  - Purchase specimen listed in Annex A
  - Offered to purchase specimen listed in Annex A
  - Acquired for commercial purposes a specimen listed in Annex A
  - Display to the public for commercial purposes a specimen listed in Annex A
  - Sold for commercial gain a specimen listed in Annex A
  - Sold a specimen listed in Annex A
  - Kept for sale a specimen listed in Annex A
  - Offered for sale a specimen listed in Annex A
  - Transported for sale a specimen listed in Annex A
  - Prohibited purchase/sale etc. of specimen listed in Annex B
  - Purchase specimen listed in Annex B
  - Offered to purchase specimen listed in Annex B
  - Acquired for commercial purpose a specimen listed in Annex B
  - Sold a specimen listed in Annex B
  - Kept for sale a specimen listed in Annex B
  - Offered for sale a specimen listed in Annex B
  - Transport for sale a specimen listed in Annex B
  - Furnishing a false statement pursuant to regulation 6.
  - Recklessly furnish a certificate which was false in a material particular pursuant to regulation 6
  - Improperly importing goods on which prohibition or restriction applies (other than controlled drug)
- Improperly importing goods
  - Improper importation of goods
  - Improper importation of goods with intent to defraud (goods)
  - Improper importation of goods with intent to evade any prohibition or restriction (goods)
  - Import/export goods - fraudulent evasion of duty/prohibition
  - Import/export goods on which a prohibition or restriction is in force with intent to defraud
  - Import/export goods on which prohibition or restriction is in force with intent to evade duty
  - Import/export - fraudulent evasion of prohibition (forgery etc)
  - Import/export fraudulent evasion of prohibition - seal skin regs.
  - Fraudulent evasion of duty - unlawful removal duty not paid
  - Fraudulent evasion of duty - unlawful removal duty not paid with intent to defraud
  - Fraudulent evasion of duty unlawful removal duty not paid with intent to evade prohibition or restriction
  - Evasion of duty - possess goods export/import prohibited
  - Possess goods the import or export of which is prohibited with intent to defraud duty payable
  - Possess goods the import or export of which is prohibited w/i to evade any prohibition/restriction
  - Evasion of prohibition - possess goods for export/import (forgery etc..)
  - Evasion of prohibition - possession of goods for export/import (seal skin regs)
  - Fraudulent evasion of duty prohibition or provision
  - Attempt fraudulent evasion of duty prohibition or provision
  - Evade duty - possess goods chargeable/unlawfully removed
  - Possession of goods removed from

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- warehouse/duty not paid with intent to defraud
  - Possession of goods removed from warehouse/duty not paid w/i to evade any prohibition/restriction
  - Improper importation of indecent or obscene articles
  - Rescue damage destroy anything liable to forfeiture
  - Take steps whether by self or another to fraudulently evade any duty of excise on any goods
  - Failing to supply information required by the treasury
  - Illegal exportation of goods
  - Pyramid selling
  - Issuing, circulating or distributing document in contravention of regulation under s. 119(1)
  - Contravening regulation under s. 119(1)
  - Participant in trading scheme in s. 119 benefiting from or receiving payment from other participant
  - Promoter of, or participant in, trading scheme in s. 119 attempting to induce another to make payments
  - Contravening prohibition imposed by order in respect of consumer trade practices
  - Possessing by way of trade copy of sound recording or cinematographic film knowing it infringes copyright
  - Making article for sale or hire which infringes copyright
  - Selling, hiring or offering for sale or hire article which infringes copyright
  - Exhibiting by way of trade in public place article which infringes copyright
  - Importing article which infringes copyright
  - Distributing article which infringes copyright
  - Making or possessing plate for infringing copyright
  - Making article for sale or hire which infringes copyright.
  - Importing article which infringes copyright.
  - Possessing in the course of business article which infringes copyright.
  - Sells, lets or hires, in the course of business, article which infringes copyright.
  - Offers or exposes for sale or hire in the course of business article which infringes copyright.
  - Exhibiting in public in the course of business article which infringes copyright.
  - Distributing in the course of business article which infringes copyright.
  - Distributing in the course of business article which infringes copyright
  - Distributes an article which infringes copyright to the prejudice of the copyright owner.
  - Distributing an article which infringes copyright to the prejudice of the copyright owner
  - Making an article designed or adapted to copy particular copyright work, in the course of business.
  - Possessing an article designed or adapted to copy particular copyright work, in the course of business.
  - Causing the public performance of a literary, dramatic or musical work which infringes copyright.
  - Causing the playing or showing in public of a sound recording or film which infringes copyright.
  - Without consent makes for sale or hire an illicit recording.
  - Without consent imports illicit recordings.
  - Without consent possesses illicit recordings in the course of business.
  - Without consent sells, lets or hires illicit recordings in the course of business.
  - Without consent offers or exposes for sale illicit recordings in the course of business.
  - Without consent distributes illicit
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- recordings in the course of business.
- Without consent causing a recording of a performance to be showed or played in public.
  - Without consent causing a recording of a performance to be broadcast.
  - False representation of authority to give consent to a performance.
  - Apply to goods mark similar to registered trade mark.
  - Apply to any other material mark similar to registered trade mark.
  - Sell goods bearing mark similar to registered trade mark.
  - Sell any other material bearing mark similar to registered trade mark.
  - Hire goods bearing mark similar to registered trade mark.
  - Hire any other material bearing mark similar to registered trade mark.
  - Expose for sale/hire goods bearing mark similar to registered trade mark.
  - Exposing for sale goods bearing mark similar to registered trade mark
  - Exposing for hire goods bearing mark similar to registered trade mark
  - Expose for sale/hire any other material bearing mark similar to registered trade mark.
  - Exposing for sale material bearing mark similar to registered trade mark
  - Exposing for hire material bearing mark similar to registered trade mark
  - Distribute goods bearing mark similar to registered trade mark.
  - Distribute any other material bearing mark similar to registered trade mark.
  - Use material bearing mark similar to registered trade mark in labelling/ packaging/ advertising business.
  - Possess in business goods or material bearing mark similar to registered trade mark.
  - Possess, in the course of business, goods bearing mark similar to registered trade mark
  - Possess, in the course of business, material bearing mark similar to registered trade mark
  - Possessing goods bearing mark similar to registered trade mark with a view to use in the course of business
  - Possessing material bearing mark similar to registered trade mark with a view to use in business
  - Possess in business goods or material bearing mark similar to registered trade mark for third party use.
  - Possessing, in the course of business, goods bearing mark similar to registered trade mark for third party
  - Possess, in course of business, material bearing mark similar to registered trade mark for third party
  - Apply false trade mark to goods.
  - Sell goods bearing false trade mark.
  - Let for hire goods bearing false trade mark.
  - Offer or expose for sale goods bearing false trade mark
  - Offer or expose for hire goods bearing false trade mark.
  - Distribute goods bearing false trade marks.
  - Possess goods with false trade mark for sale or hire.
  - Apply false trade mark to material.
  - Use material bearing false trade mark.
  - Possess material bearing false trade mark.
  - Make article for making copies of trade mark.
  - Possess article for making copies of trade mark.
  - Make false entry in trade marks register.
  - Cause false entry to be made in trade marks register.
  - Make false copy of trade marks register entry.

- Cause to be made a false copy of trade marks register entry.
- Produce or tender false copy of trade marks register entry.
- Cause to be produced or tendered a false copy of trade marks register entry.
- Applying false trade description to goods
- Supplying goods to which false trade description applied
- Offering to supply goods to which false trade description applied
- Knowingly making false statement as to service
- Recklessly making false statement as to service
- Making false statement to authorised officer
- Supply or offer to supply goods which contravene marking order made under s. 8(1)
- Publish advertisement which contravenes order under s. 9(1)
- Making false representation as to royal approval or award etc.
- Making false representation as to supply of goods or services
- Disclosing restricted information without authorisation
- Selling in the course of business article which infringes copyright
- Letting for hire in the course of business article which infringes copyright
- Unauthorised decoders
- Make unauthorised decoder
- Import unauthorised decoder
- Sell unauthorised decoder
- Let for hire unauthorised decoder
- Infringe copyright
- Infringe copyright in work by communicating it to public in course of a business/otherwise
- Infringe performers making available right in the course of a business/ otherwise
- Device to facilitate/enable circumvent of technological measures
- Manufacture device produced to facilitate/enable circumvent of technological measures
- Import other than for private use a device produced to enable circumvent technological measures
- In course of business sold/let for hire device produced to enable circumvent technological measures
- In course of business offer/expose for sale device produced to enable circumvent technological measures
- In course of business advertise for sale/hire device produced to facilitate circumvent technological measures
- In course of business possess device produced to enable circumvent technological measures
- In course of business distribute device produced to enable circumvent technological measures
- Distribute other than in business to affect copyright owner device made to circumvent technological measures
- Provide in course of business a service to facilitate circumvent of technological measures
- Provide not in the course of business a service to facilitate circumvent of technological measures
- Authorising issue of prospectus with untrue statement
- Knowingly or recklessly authorising the issue of a false company statement
- Knowingly or recklessly permitting the issue of a false company statement
- Giving financial assistance for share acquisition
- Making statutory declaration (under s. 155) without having reasonable grounds for opinion expressed
- Making statutory declaration without having (under s. 175) reasonable

grounds for opinion expressed

- Making false statement in purported fulfilment of obligation to notify company
- Failing to provide information as to interest in shares
- Making false statement as to interest in shares
- Failing to keep proper accounting records
- Failing to keep accounting records in proper place
- Failing to keep accounting records open to inspection
- Officer of company failing to meet requirements for preservation of accounting records
- Authorising the failure to keep proper company accounts
- Permitting the failure to keep proper company accounts
- Intentionally causing failure to preserve company accounts
- Permitting the failure to keep company accounts in proper place
- Authorising the failure to keep company accounts in proper place
- Failing to secure preservation of accounting records
- Contravening disqualification order
- Director dealing in options to buy or sell company's listed shares or debentures
- Director failing to disclose share holdings in own company
- Director making false disclosure of share holdings in own company
- Director failing to disclose family share holdings in his/her company
- Director making false disclosure of family share holdings in his/her company
- Procuring company to make unlawful loans
- Making false statement to auditors
- Failing to give Secretary of State

information about share holdings

- Giving Secretary of State false information about share holdings
- Publishing information obtained by Secretary of State investigating company
- Disclosing information obtained by Secretary of State investigating company
- Destroying company document
- Mutilating company document
- Falsifying company document
- Making false entry in company document
- Parting with company document
- Altering company document
- Making an omission in company document
- Giving false explanation of company documents produced to Secretary of State
- Making false statement as to whereabouts of company documents required by Secretary of State
- Making statutory declaration of company's solvency without reasonable grounds
- Concealing company property in anticipation of winding up
- Failing to give up property of company being wound up to liquidator
- Failing to give up documents of company being wound up to liquidator
- Failing to disclose false debt of company being wound up to liquidator
- Falsifying documents of company being wound up
- Making material omission from statement relating to affairs of company being wound up
- Making false representation to creditors of company being wound up
- Off-market dealing in company securities
- Counselling off-market dealing in company securities



- Procuring off-market dealing in company securities
- Communicating information for use in off-market dealing in company securities
- Communicating information for use in counselling off-market dealing in company securities
- Communicating information for use in procuring off-market dealing in company securities
- Counselling off-market dealing in company securities outside Great Britain
- Procuring off-market dealing in company securities outside Great Britain
- Communicating information for use in off-market dealing in securities outside Great Britain
- Communicating information for use in counselling off-market dealing in company securities outside UK
- Communicating information for use in procuring off-market dealing in company securities outside Great Britain
- Person contravening company directors disqualification order
- Removing company property in anticipation of winding-up
- Destroy/alter/falsify company records with intent
- Company being wound up destroy company records with intent
- Company being wound up mutilate company records with intent
- Company being wound up alter company records with intent
- False representation to/fraud on creditors of company being wound up
- Commit a fraud on creditors of company being wound up
- Re-using prohibited company name
- Acting as insolvency practitioner without qualification
- Obtaining credit whilst disqualified
- from managing company
- Carry on or purport to carry on investment business without entitlement
- Knowingly make false deceptive or dishonest statement promise or forecast which conceals any material fact
- Recklessly make false deceptive or dishonest statement promise or forecast which conceals any material fact
- Create false or misleading impression concerning the status of investments to influence action of another
- Unauthorised person issuing unapproved investment advertisement in UK
- Unauthorised person causing the issue of unapproved investment advertisement in UK
- Issue advertisement promoting contract of insurance with unauthorised body or company
- Cause to be issued advertisement promoting contract of insurance with unauthorised body or company
- Advise another in the course of business to enter contract of insurance with unauthorised body or company
- Procure another in the course of business to enter contract of insurance with unauthorised body or company
- Knowingly make false statement promise or forecast to influence another about contract of insurance
- Recklessly make false statement promise or forecast to influence another about contract of insurance
- Issue advertisement offering securities on admission to approved exchange otherwise than as prescribed
- Cause issue of advertisement offering securities on admission to approved exchange other than as prescribed
- Unauthorised issue advertisement

- offering securities as primary/  
secondary offer other than as  
prescribed
- Causing the issue of advertisement offering securities as primary/  
secondary offer other than as  
prescribed
  - Contravene requirement imposed  
exempting advertisement offering  
securities from requirement under the  
act
  - Contravene rule made as to terms  
and implementation of offer of  
securities
  - Contravene requirement imposed  
exempting advertisement offering  
securities from prohibition under the  
act
  - Disclose restricted information  
without authority
  - Knowingly or recklessly furnish false  
or misleading information
  - Falsely describe or indicate self to be  
an authorised or exempted person
  - Falsely describe or indicate self  
to have status of recognised self  
regulating organisation etc..
  - Conceal/destroy/falsify records  
before company winds up
  - Mutilating document in anticipation of  
winding-up
  - Falsifying document in anticipation of  
winding-up
  - Conceal/destroy records before  
company winds up
  - Making false entry in document in  
anticipation of winding-up
  - Part with/alter document before  
company winds up
  - Part with document before company  
winds up
  - Altering document in anticipation of  
winding-up
  - Making omission in document in  
anticipation of winding-up
  - Pawn/pledge/dispose of property  
before company winds up
  - Pawn property before company winds  
up
  - Pledge property before company  
winds up
  - Disposing of property obtained on  
credit and not paid for, in anticipation  
of winding-up
  - Privy to concealment/destruction of  
records before company winds up
  - Privy to mutilation of records before  
company winds up
  - Privy to falsification of records before  
company winds up
  - Privy to false entry in records before  
company winds up
  - Privy to parting with/alter/omission of  
document before company winds up
  - Privy to parting with document before  
company winds up
  - Privy to alteration of document before  
company winds up
  - Privy to making omission in document  
before company winds up
  - Conceal property//debt as company  
winds up
  - Conceal property as company winds  
up
  - Conceal debt due to the company as  
company winds up
  - Conceal debt due from company as  
company winds up
  - Remove property as company winds  
up
  - Conceal/destroy/falsify records as  
company winds up
  - Conceal/destroy records as company  
winds up
  - Mutilate records as company winds  
up
  - Falsify records as company winds up
  - Make false entry in records as  
company winds up
  - Part with/alter/omission in document  
as company winds up
  - Part with document as company  
winds up

- Alter document as company winds up
- Make omission in document as company winds up
- Pawn/pledge/dispose of property as company winds up
- Pawn property as company winds up
- Pledge property as company winds up
- Dispose of property as company winds up
- Conceal/destroy/mutilate/falsify records as company winds up
- Privy to false entry in records as company winds up
- Privy to part with/alter/make omission in document as company winds up
- Privy to parting with document as company winds up
- Privy to altering document as company winds up
- Privy to making omission in document as company winds up
- Take in pawn/pledge/receive property before company winds up
- Take in pawn property before company winds up
- Take in pledge property before company winds up
- Receive property before company winds up
- Give/transfer/make charge on company property
- Company being wound up made charge on company property
- Company being wound up cause to be made charge on company property
- Cause/connive at the levying of an execution against company property
- Cause levying of an execution against company property
- Connived at the levying of an execution against company property
- Conceal/remove property on judgement/order against company
- Conceal/remove property since unsatisfied judgement/order
- Conceal/remove property within two months before unsatisfied judgement/order
- Fail to reveal property to liquidator
- Prevent production of company books of company being wound up
- Falsely account for property as company winds up
- Falsely account for property before company winds up
- Make/privy to false entry in company documents of company being wound up
- Make false entry in company documents of company being wound up
- Privy to making false entry in company books of company being wound up
- Make omission in statement of company affairs prior to winding up
- False representation to fraud on creditors of company before winding up
- Make false representation to creditors of company before winding up
- Commit a fraud on creditors of company prior to winding up
- Being party to the carrying on of business with intent to defraud creditors
- Being party to the carrying on of business for any fraudulent purpose
- Alter suppress destroy document required under s.109 of the act
- Alter document required for production under s.109 of the act
- Suppress document required for production under s.109 of the act
- Destroy document required for production under s.109 of the act
- Supply false/misleading material in connection with functions under the act
- Supply false/misleading material to oft/commission/sec of state in

- connection with functions under the act
- Supply false/misleading information to another knowing it will be supplied to oft/commission/sec of state
  - Intentionally fail to comply with notice under s. 174 of the act
  - Alter suppress destroy document required for production under s. 174
  - Alter document required for production under s. 174 of the act
  - Suppress document required for production under s. 174 of the act
  - Destroy document required for production under s. 174 of the act
  - Obstruct or delay in exercise of powers under s. 174 of the act
  - Obstruct or delay the oft in exercise of powers under s. 174 of the act
  - Obstruct or delay any person in exercise of powers under s. 174(7)
  - Cartel offences
  - Make statement which is false or misleading in purported compliance with requirement under ss. 193 or 194
  - Disposal of documents relevant to investigation by SFO/oft under s. 188 offence
  - Falsify conceal destroy documents relevant to investigation by SFO/oft under s. 188 offence
  - Cause destruction falsification concealment of documents relevant to SFO/oft investigation s. 188 offence
  - Permit falsification concealment destruction of documents relevant to SFO/oft investigation s. 188 offence
  - Obstruct person exercising powers under warrant under s. 194
  - Fail to notify company creditors of application to have name of company struck off the register
  - Insider dealing by acquiring price-affected securities on regulated market.
  - Insider dealing by disposing of price-affected securities on regulated market
  - Insider dealing in price-affected shares on regulated market by relying on professional intermediary.
  - Insider dealing in price-affected shares on regulated market by acting as professional intermediary.
  - Using information obtained as insider dealer to encourage another to deal in price-affected securities.
  - Improperly disclosing information obtained as insider dealer.
  - Mock auctions
  - Promoting mock auction
  - Conducting mock auction
  - Assisting in conduct of mock auction
  - Theft
  - Theft of cycle
  - Theft from vehicle
  - Theft (from motor vehicle)
  - Theft (from other vehicle)
  - Theft of vehicle/conveyance
  - Theft of vehicle
  - Theft of conveyance other than motor vehicle or pedal cycle.
  - Theft - shoplifting
  - Theft from meter
  - Theft - walk-in
  - Theft of fixture by tenant
  - Theft of wild creatures
  - Theft of wild flowers
  - Theft of mail in transmission
  - Unlawful taking or opening of mailbag
  - Unlawful taking of mailbag
  - Unlawful opening of mailbag
  - Stealing of mail by post office employee
  - Secreting of mail by post office employee
  - Destroying of mail by post office

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- employee
  - Travelling on railway without paying fare
  - Attempting to travel without paying rail fare
  - Travelling beyond distance for which rail fare paid
  - Giving false name and address
  - Making off without paying
  - Dishonestly using electricity
  - Killing deer
  - Taking fish in private waters
  - Taking fish at night - other than by angling
  - Taking fish at night by angling
  - Taking fish in daytime - other than by angling
  - Attempting to take fish at night - other than by angling
  - Attempting to take fish at night by angling
  - Attempting to take fish in daytime - other than by angling
  - Destroying fish in private waters
  - Destroying fish at night - other than by angling
  - Destroying fish at night by angling
  - Destroying fish in daytime - other than by angling
  - Attempting to destroy fish at night - other than by angling
  - Attempting to destroy fish at night by angling
  - Attempting to destroy fish in daytime - other than by angling
  - Attempting to destroy fish in daytime by angling
  - Attempting to unlawfully take or destroy fish other than by angling
  - Taking marine wreck from united kingdom to sell abroad
  - Taking part of marine wreck from united kingdom to sell abroad
  - Removal of articles from public place
  - Taking deer
  - Injuring deer
  - Killing deer during close season
  - Taking deer during close season
  - Killing deer at night
  - Taking deer at night
  - Setting article in position to injure deer
  - Using article to kill deer
  - Using article to take deer
  - Using weapon to injure deer
  - Using weapon to kill deer
  - Using weapon to take deer
  - Using weapon from vehicle against deer
  - Using mechanically propelled vehicle to drive deer
  - Trespass on land in search or pursuit of deer with intent to kill or injure
  - Taking, killing or injuring deer
  - Attempting to take, kill or injure deer
  - Attempting to take deer
  - Attempting to kill deer
  - Attempting to injure deer
  - Remove carcass of deer
  - Failing to supply name, address, and to quit land whilst suspected of poaching deer
  - Taking or killing deer during close season
  - Attempting to take or kill deer during closed season
  - Attempting to take deer during closed season
  - Attempting to kill deer during closed season
  - Taking or killing deer at night
  - Attempting to take or kill deer at night
  - Attempting to take deer at night
  - Attempting to kill deer at night
  - Attempting to set article in position to injure deer
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- Using article to kill or take deer
- Attempting to use article to kill or injure deer
- Using a weapon for the purpose of taking, killing or injuring deer
- Attempting to use a weapon for the taking, killing or injuring deer
- Attempting to use a weapon from a vehicle against deer
- Using vehicle to drive deer
- Attempting to drive deer from a vehicle
- Possessing prohibited article, firearm or ammunition for purpose of poaching deer
- Possessing prohibited article for purpose of poaching deer
- Possessing firearm for purpose of poaching deer
- Possessing ammunition for purpose of poaching deer
- Selling, offering, exposing or possessing for sale illegally obtained venison
- Selling illegally obtained venison
- Offering for sale illegally obtained venison
- Exposing for sale illegally obtained venison
- Possessing for sale illegally obtained venison
- Purchasing, offering to purchase or receiving to purchase illegally obtained venison
- Purchasing illegally obtained venison
- Offering to purchase illegally obtained venison
- Receiving illegally obtained venison
- Searching for deer with intent to take, kill or injure them
- Pursuing deer with intent to take, kill or injure them
- Stealing
- Larceny simple
- Possessing or have on premises
- any stolen dog skin after a previous summary conviction
- Stealing any will, codicil or other testimony instrument of a living or dead person
- Stealing any document of title relating or belonging to any government or court
- Stealing or breaking any glass, woodwork, metal on any building or private property
- Stealing any garment during process of manufacture
- Abstracting electricity
- Stealing mail
- Stealing from dwelling house
- Stealing from the person
- Stealing goods from ship, barge or boat or any vessel while in distress
- Stealing fixtures or fittings as tenant
- Stealing as servant
- Officer of post office stealing mail
- Stealing as servant from bank of England
- Stealing as bailee
- Larceny of cattle, horses or sheep
- Stealing a carcass or any part of an animal
- Concealing low wine feint, spirit etc. in distillery
- Remove without consent low wine feint, spirit etc. from distillery
- Unlawfully taking fish
- Unlawfully destroy fish
- Unlawful possession
- Knowingly buy or receive low wine feint or spirit which has been unlawfully concealed or removed
- Knowingly buy low wine feint or spirit which has been unlawfully concealed or removed
- Knowingly buy or receive spirit unlawfully removed from storage before duty has been charged or paid

- Knowingly buy spirit unlawfully removed from storage before duty has been charged or paid
- Possessing spirit knowing it to be removed unlawfully from storage before duty has been paid or charged
- Dishonestly retaining a wrongful credit
- Tampering with motor vehicle
- Vehicle interference
- Interfering with vehicle
- Interfering with trailer
- Taking conveyance without authority
- Taking motor vehicle without consent
- Taking conveyance without consent (other than motor vehicle or pedal cycle)
- Allowing self to be carried on conveyance taken without authority
- Being carried in motor vehicle taken without consent
- Being carried in conveyance taken without consent (other than motor vehicle or pedal cycle)
- Taking or riding pedal cycle without authority
- Taking pedal cycle without authority
- Riding pedal cycle without authority
- Driving a conveyance knowing it to have been taken without authority
- Driving motor vehicle taken without consent
- Driving conveyance taken without consent (other than motor vehicle or pedal cycle)
- Take vehicle without consent (other than cause death) where damage under £2000 not only aggravating factor
- Take vehicle without consent where damage below £2000 is the only aggravating factor
- Take without consent vehicle (other than cause death) cause damage under £5000 not only aggravating factor
- Taking vehicle without consent
- where damage below £5000 only aggravating factor
- Take vehicle without consent and drive dangerously
- Aggravated vehicle taking - being carried
- Being carried in stolen vehicle which subsequently causes death of person
- Being carried in stolen vehicle (other than cause death), damage under £2000 not only aggravating factor
- Being carried in stolen vehicle where damage below £2000, is the only aggravating factor
- Being carried in stolen vehicle (other than cause death) damage under £5000 not only aggravating factor
- Being carried in stolen vehicle where damage below £5000 only aggravating factor
- Being carried in vehicle taken without consent and driven dangerously
- Aggravated vehicle taking (being carried) drove dangerously on road or place
- Aggravated vehicle taking (being carried) accident occurs causing injury
- Aggravated vehicle taking (being carried) accident cause damage to property other than vehicle over £5000
- Aggravated vehicle taking (being carried) accident cause damage to property other than vehicle under £5000
- Aggravated vehicle taking (being carried) accident cause damage to vehicle over £5000
- Aggravated vehicle taking (being carried) accident cause damage to vehicle under £5000
- Aggravated vehicle taking (being carried) accident cause damage vehicle + property other than vehicle less 5000
- Aggravated vehicle taking - driving
- Drive stolen vehicle (other than cause

- death), damage under £2000 not only aggravating factor
- Drive stolen vehicle where damage below £2000 is the only aggravating factor
- Drive stolen vehicle (other than cause death) damage under £5000 not only aggravating factor
- Driving stolen vehicle where damage below £5000 only aggravating factor
- Vehicle taken without consent dangerously
- Aggravated vehicle taking (driving) accident occurs causing injury
- Aggravated vehicle taking (driving) accident cause damage to property other than vehicle over £5000
- Aggravated vehicle taking (driving) accident occurs cause damage to property other than vehicle under £5000
- Aggravated vehicle taking (driving) accident occurs cause damage to vehicle over £5000
- Aggravated vehicle taking (driving) accident occurs cause damage to vehicle under £5000
- Aggravated vehicle taking (driving) cause damage to vehicle + property other than vehicle under 5000
- Tampering with a motor vehicle
- Taking and driving away motor vehicle without owners consent
- Tampering with/getting on motor vehicle
- Taking and driving away a motor vehicle without owners consent
- Allow self to be carried in vehicle taken without owners consent
- Going equipped for burglary
- Going equipped for theft
- Going equipped for theft (other than theft of motor vehicle)
- Going equipped for theft (of motor vehicle)
- Going equipped for taking motor vehicle without consent
- Going equipped to cheat
- Possessing house breaking implements by night
- Possess any instrument (other than firearm/other offensive weapon) w/i to commit an arrestable offence
- Found on enclosed premises for unlawful purpose
- Suspected person or reputed thief loitering
- Day poaching by 4 or less
- Day poaching by 5 or more
- Day trespass by 5 or more armed and offering violence
- Night trespasser destroying game
- Night trespasser entering land with gun
- Night trespasser entering land with poaching equipment
- Night trespasser armed and offering violence
- Night trespass for poaching by 3 or more armed persons
- Using prohibited instrument to take fish
- Using prohibited instrument to kill fish
- Possessing prohibited instrument w/i to take fish
- Possessing prohibited instrument w/i to kill fish
- Throwing object to take fish
- Throwing object to kill fish
- Discharging object to take fish
- Discharging object to kill fish
- Polluting waters containing fish
- Using explosive w/i to take fish
- Using explosive w/i to destroy fish
- Using noxious substance w/i to take fish
- Using noxious substance w/i to destroy fish
- Using electrical device w/i to take fish
- Using electrical device w/i to destroy



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- fish
  - Destroying water control barrier w/i to take fish
  - Destroying water control barrier w/i to destroy fish
  - Damaging water control barrier w/i to take fish
  - Destroying flood-gate with intent to take fish
  - Destroying sluice with intent to take fish
  - Damaging water control barrier w/i to destroy fish
  - Destroying flood-gate with intent to destroy or kill fish
  - Destroying sluice with intent to destroy or kill fish
  - Possessing explosive w/i to take fish
  - Possessing explosive w/i to destroy fish
  - Possessing noxious substance w/i to take fish
  - Possessing noxious substance w/i to destroy fish
  - Possessing electrical device w/i to destroy fish
  - Possessing electrical device w/i to take fish
  - Fishing without licence
  - Fishing without licence, with instrument other than rod and line
  - Possessing unlicensed instrument w/i to take fish
  - Possessing unlicensed instrument (other than rod and line) to take fish
  - Handling salmon in suspicious circumstances
  - Killing a schedule 1 wild bird
  - Kill non-schedule 1 wild bird
  - Injuring a schedule 1 wild bird
  - Injure non-schedule 1 wild bird
  - Taking a schedule 1 wild bird
  - Take non-schedule 1 wild bird
  - Take schedule 1 wild birds egg
  - Take non-schedule 1 wild birds egg
  - Destroy schedule 1 wild birds egg
  - Destroy non-schedule 1 wild birds egg
  - Possess schedule 1 wild bird egg or its parts
  - Possess non-schedule 1 wild bird egg or its parts
  - Disturbing dependent young of a schedule 1 wild bird
  - Obstructing authorised person
  - Obstructing authorised person from inspecting a wild bird
  - Obstructing authorised person from inspecting a schedule 4 bird
  - Promoting an event where captive birds are released by hand for shooting
  - Arranging an event where captive birds are released by hand for shooting
  - Conducting an event where captive birds are released by hand for shooting
  - Assisting in an event where captive birds are released by hand for shooting
  - Receiving money for an event where captive birds are released by hand for shooting
  - Taking part in an event where captive birds are released by hand for shooting
  - Permitting land to be used for shooting released captive birds
  - Killing a schedule 5 animal
  - Injuring a schedule 5 animal
  - Taking a schedule 5 animal
  - Obstructing access to the shelter of a schedule 5 animal
  - Setting a snare to injure a wild animal
  - Positioning articles to injure a schedule 6 animal
  - Picking a schedule 8 wild plant
  - Uprooting a schedule 8 wild plant
  - Destroying a schedule 8 wild plant
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- Uprooting a wild plant
- Killing badger
- Attempting to kill badger
- Injuring badger
- Attempting to injure badger
- Taking badger
- Attempting to take badger
- Possessing dead badger
- Possessing part of a dead badger
- Possessing thing derived from dead badger
- Use badger tongs in course of killing badger
- Use badger tongs in the course of taking badger
- Use badger tongs in the course of attempting to take badger
- Digging for badger
- Use a firearm for killing badger
- Use firearm whilst taking badger
- Damage a badger sett or any part of it
- Destroy badger sett or any part of it
- Obstructing access to, or any entrance of a badger sett
- Cause a dog to enter a badger sett
- Disturb badger when it is occupying badger sett
- Selling a live badger
- Offer live badger for sale
- Possess or control live a badger
- Unlawfully mark, or attach ring or tag or marking device to badger
- Unlawfully attach ring, tag or marking device to badger
- Fail to comply with conditions of a licence
- Have custody of dog in contravention of order under subsection 13(1)(b)
- Fail to comply with requirement imposed under subsection 13(2)(a)
- Refusing to give name and address to constable
- Using firearm for killing or taking a badger
- Using badger tongs in the course of killing or taking or attempting to kill or take a badger
- Interfering with a badger set
- Possessing or controlling dead badger or parts thereof
- Killing taking or injuring deer
- Searching or pursuing deer with intent to take kill or injure them
- Attempting to kill or take or injure deer
- Taking schedule 1 wild birds nest
- Damage or destroying schedule 1 wild birds nest
- Taking non schedule 1 birds nest
- Damaging or destroying non schedule 1 wild birds nest
- Possessing live/dead schedule 1 wild bird or its parts
- Possessing live/dead non schedule 1 wild bird or its parts
- Disturbing schedule 1 wild bird
- Set trap to cause injury to wild bird
- Using trap to kill/take wild bird
- Using decoy to kill/take wild bird
- Using vehicle to kill/take wild bird
- Causing the setting of trap to cause injury to wild bird
- Permitting the setting of a trap to cause injury to a wild bird
- Knowingly permitting the use of a trap to kill/take wild bird
- Knowingly cause the use of a trap to kill/take wild bird
- Knowingly causing the use of a weapon to kill/take wild bird
- Knowingly permitting the use of a weapon to kill/take wild bird
- Permitting the use of a decoy to kill/take wild bird
- Causing the use of a decoy to kill/take wild bird

- Permitting the use of a vehicle to kill/take wild bird
- Causing the use of a vehicle to kill/take wild bird
- Transporting for the purpose of sale a live schedule 1 wild bird/egg
- Selling a live schedule 1 wild bird/egg
- Offering or exposing for sale a live schedule 1 wild bird/egg
- Having in your possession for the purpose of sale a live schedule 1 wild bird/egg
- Selling a live non schedule 1 wild bird/egg
- Offering or exposing for sale a live non schedule 1 wild bird/egg
- Having in your possession for the purpose of sale a live non schedule 1 wild bird/egg
- Transporting for the purpose of sale a live non schedule 1 wild bird/egg
- Publishing advertisement to sell/buy live schedule 1 wild bird/egg
- Causing to be published an advertisement to sell/buy live schedule 1 wild bird/egg
- Publishing advertisement to sell/buy live non schedule 1 wild bird/egg
- Causing to be published an advertisement to sell/buy non schedule 1 wild bird/egg
- Having in your possession for the purpose of sale a dead schedule 1 wild bird
- Offering or exposing for sale a dead schedule 1 wild bird
- Transported for the purpose of sale a dead schedule 1 wild bird
- Selling a dead schedule 1 wild bird
- Transporting for the purpose of sale a dead non schedule 1 wild bird
- Selling a dead non schedule 1 wild bird
- Offering or exposing for sale a dead non schedule 1 wild bird
- Having in your possession for the purpose of sale a dead non schedule 1 wild bird
- Cause to be published an advertisement to sell/buy a dead schedule 1 wild bird
- Publishing advertisement to sell/buy a dead schedule 1 wild bird
- Cause to be published an advertisement to sell/buy a dead non schedule 1 wild bird
- Publishing advertisement to sell/buy a dead non schedule 1 wild bird
- Permitting to be shown a live schedule 1 wild bird in competition
- Showing a live schedule 1 wild bird in a competition
- Causing to be shown a live schedule 1 wild bird in a competition
- Causing to be shown a live non schedule 1 wild bird in competition
- Showing a live non schedule 1 wild bird in competition
- Permitting to be shown a live non schedule 1 wild bird in a competition
- Keeping/possessing/having under your control an unregistered schedule 4 bird
- Keeping/possessing/having under your control a schedule 4 bird within 5 years of conviction
- Keeping/possessing/having under your control a schedule 4 bird within 3 years of conviction
- Offering to dispose of schedule 4 bird to a person convicted within 5 years
- Dispose of schedule 4 bird to a convicted person within 5 years
- Offering to dispose of schedule 4 bird to a convicted person within 3 years
- Dispose of schedule 4 bird to convicted person within 3 years
- Using weapon to kill/take wild bird
- Throw or discharge stone or missile to kill or take fish
- Possess prohibited implements to take or kill salmon trout or freshwater fish

- Use prohibited implement to take or kill salmon trout or fresh water fish
- Destroy/damage dam/flood gate/slucice to take or destroy fish
- Take fish using explosive poison electrical or noxious substance
- Cause/permit/put poisonous matter in waters
- Cause to flow into waters liquid or solid matter to cause waters to be poisonous
- Knowingly permitted to flow into waters liquid or solid matter to cause the waters to be poisonous
- Put into waters liquid or solid matter to cause waters to be poisonous
- Knowingly permit to be put into water liquid or solid matter to cause water to be poisonous
- Planting schedule 9, part ii plant in the wild
- Causing schedule 9, part ii plant to grow in the wild
- Use of trap to kill/take schedule 6 wild animal
- Cause use of trap to kill/take schedule 6 wild animal
- Permit use of trap to kill/take schedule B wild animal
- Setting trap to injure schedule 6 wild animal
- Cause setting trap to injure schedule 6 wild animal
- Permit setting trap to injure schedule 6 wild animal
- Use of decoy to kill/take wild animal
- Cause use of decoy to kill/take wild animal
- Permit use of decoy to kill/take wild animal
- Cause use of snare/weapon to kill/take wild animal
- Permit use of snare/weapon to kill/take wild animal
- Setting self-locking snare to injure wild animal
- Cause setting self-locking snare to injure wild animal
- Permit setting self-locking snare to injure wild animal
- Fail to inspect snare every day
- Fail to cause inspection of snare every day
- Fail to permit inspection of snare every day
- Use of vehicle to kill/take schedule 6 wild animal
- Cause use of vehicle to kill/take schedule 6 wild animal
- Permit use of vehicle to kill/take schedule 6 wild animal
- Use of decoy to kill/take schedule 6 wild animal
- Cause use of decoy to kill/take schedule 6 wild animal
- Permit use of decoy to kill/take schedule 6 wild animal
- Use of weapon to kill/take schedule 6 wild animal
- Cause use of weapon to kill/take schedule 6 wild animal
- Permit use of weapon to kill/take schedule 6 wild animal
- Keeping/confining bird in cage the dimensions of which are insufficient to permit bird to stretch wings
- Advertise to buy or sell a live or dead schedule 5 animal
- Publish advert to buy or sell a live or dead schedule 5 animal
- Cause to be published advertisement to sell/buy live/dead schedule 5 wild animal
- Trespass on land in pursuit of game
- Damage/destroy schedule 5 animals shelter
- Use snare/weapon to kill/take wild animal
- Use decoy to kill/take wild animal
- Use trap to kill/take wild animal
- Use weapon to kill/take schedule 6

- wild animal
- Use decoy to kill/take schedule 6 wild animal
  - Use vehicle to kill/take schedule 6 wild animal
  - Disturb schedule 5 wild animal - dolphin/whale/shark
  - Sell/offer for sale live/dead schedule 8 wild plant
  - Sell live/dead schedule 8 wild plant
  - Offer/expose for sale live/dead schedule 8 wild plant
  - Possess for the purpose of sale live/dead schedule 8 wild plant
  - Transport for the purpose of sale live/dead schedule 8 wild plant
  - Possess live/dead schedule 5 wild animal or its parts
  - Begging
  - Causing or allowing child to beg
  - Causing child to beg
  - Allowing child to beg
  - Causing or allowing young person to beg
  - Causing young person to beg
  - Allowing young person to beg
  - Procuring child to beg
  - Procuring young person to beg
  - Collecting aims, or endeavouring to procure charitable contribution, by false pretence
  - Begging in a public place
  - Fail to comply with disclosure order
  - False statement in purported compliance with disclosure order
  - Knowing a direction under s. 18 had been given disclosed information in contravention of that direction
  - Aid abet counsel or procure a person who is not a UK person to do a relevant act outside the UK
  - Incite a person who is not a UK person to do a relevant act outside the UK
  - Obstruct authorised officer in exercise of power of entry conferred by warrant under this section
  - Fail to comply with request by authorised officer or constable to facilitate entry to premises
  - Make false statement for purpose of obtaining/opposing variation/withdrawal of authorisation
  - Occupier failed to comply with duty or direction imposed
  - Give information to person exercising functions under part 7 make false or misleading statement
  - Body corporate i/c relevant premises or access to any dangerous substances kept or used there
  - Employee of body corporate i/c relevant premises or the access to any dangerous substances kept/used
  - Disclosure of information of thing to prejudice security of nuclear site
  - Contravention of prohibition on disclosure of uranium enrichment technology
  - Failure to comply with a prohibition imposed by a freezing order
  - Engage in activity that will enable/facilitate failure to comply with prohibition imposed by freezing order
  - Failure to provide information produce document in response to requirement made under freezing order
  - Provide false information under a freezing order/with a view to obtaining licence under freezing order
  - Produce false document in response to freezing order or with view to obtain licence under freezing order
  - Provide false information to requirement under freezing order or view to obtain licence under freezing order
  - Produce false document in response to requirement under freezing order/obtain licence under freezing order
  - Fail to disclose information as required by para 6 of sch. 3

- Freezing order offence committed by a body corporate and with consent/connivance of an officer of that body
- Freezing order offence by officer of body corporate with consent/connivance or attributable to neglect
- Have grounds to suspect another has committed offence and fail to disclose to constable/nominated officer
- Failure to remove disguise when required by constable
- Ports and borders - wilfully fail to comply with duty imposed under sch. 7
- Ports and borders wilfully contravene a prohibition imposed under sch.7
- Ports and borders - wilfully obstruct/seek to frustrate search/examination under sch. 7
- Unlawful use of police uniform
- Unlawful use of military uniform
- Making false statement to gain admission to a prohibited place
- Forge police documents
- Forge military documents
- Alter police documents
- Alter military documents
- Personation of an officer of the crown
- Interfering with police near prohibited place
- Interfering with her majesty's forces near prohibited place
- Failing to produce telegram for examination
- Unregistered person receiving postal packets
- Unregistered person delivering postal packets
- Failing to comply with postal requirements
- Withholding information about commission of act prejudicial to the state
- Damaging disclosure of matters relating to international relations by crown servant.
- Damaging disclosure of matters relating to international relations by government contractor.
- Damaging disclosure of matters relating to international relations by former crown servant.
- Damaging disclosure of matters relating to international relations by former government contractor.
- Damaging disclosure of confidential matters from a foreign state by crown servant.
- Damaging disclosure of confidential matters from a foreign state by government contractor.
- Damaging disclosure of confidential matters from a foreign state by former crown servant.
- Damaging disclosure of confidential matters from a former foreign state by former government contractor.
- Unlawful disclosure of matters prejudicial to crime and investigative powers by crown servant.
- Crown servant disclosing information resulting in commission of offence
- Crown servant disclosing information facilitating act prejudicial to safekeeping of person in custody
- Crown servant disclosing information impeding prevention of offence
- Crown servant disclosing information impeding detection of offence
- Crown servant disclosing information impeding apprehension of suspected offender
- Crown servant disclosing information impeding prosecution of suspected offender
- Unlawful disclosure of matters prejudicial to crime and investigative powers by government contractor.
- Government contractor disclosing information resulting in commission of offence
- Government contractor disclosing information facilitating act prejudicial

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- safekeeping of prisoner
  - Government contractor disclosing information impeding prevention of offence
  - Government contractor disclosing information impeding detection of offence
  - Government contractor disclosing information impeding apprehension of suspected offender
  - Government contractor disclosing information impeding prosecution of suspected offender
  - Unlawful disclosure of matters prejudicial to crime and investigative powers by former crown servant.
  - Former crown servant disclosing information resulting in commission of offence
  - Former crown servant disclosing information facilitating act prejudicial to safekeeping of person in custody
  - Former crown servant disclosing information impeding prevention of offence
  - Former crown servant disclosing information impeding detection of offence
  - Former crown servant disclosing information impeding apprehension of suspected offender
  - Former crown servant disclosing information impeding prosecution of suspected offender
  - Unlawful disclosure of matter prejudicial to crime and investigative powers by former government contractor.
  - Former government contractor disclosing information resulting in commission of offence
  - Former government contractor disclosing information facilitating act prejudicial to safekeeping of prisoner
  - Former government contractor disclosing information impeding prevention of offence
  - Former government contractor disclosing information impeding detection of offence
  - Former government contractor disclosing information impeding apprehension of suspected offender
  - Former government contractor disclosing information impeding prosecution of suspected offender
  - Unlawful disclosure of any matter obtained in contravention of section 1 official secrets act 1911.
  - Damaging disclosure by third party of confidential matters entrusted to other states or organisations.
  - Crown servant retaining material contrary to official duty.
  - Government contractor retaining material contrary to directions for its return/disposal.
  - While in possession of confidential material fail to comply with official directions for return/disposal
  - While in possession of confidential material fails to comply with official directions for return/disposal.
  - Failing to prevent unauthorised disclosure of material obtained from crown servant/ government contractor.
  - Retaining material contrary to official directions for return/disposal.
  - Disclosing material giving access to matters subject of disclosure provisions for unauthorised purpose.
  - Employee or ex-employee at a secure training unit unlawfully discloses information relating to inmates
  - Sedition
  - Seditious libel
  - Inciting police to disaffection
  - Causing disaffection amongst police
  - Attempting to cause (i.e. inciting) disaffection amongst police
  - Attempt to cause (i.e. inciting)
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- disaffection amongst police
- Causing or attempting to cause disaffection
- Do act calculated to cause disaffection
- Inducing or attempting to induce officer to disaffection
- Do an act calculated to induce disaffection
- Causing disaffection amongst national crime squad members
- Causing disaffection amongst NCIS members
- Inducing police to withhold services
- Inciting Her Majesty's forces to disaffection
- Unauthorised disclosure of personal census information b registrar
- Unauthorised disclosure of personal census information by person under control of registrar
- Unauthorised disclosure of personal census information by supplier of services to registrar
- Disclosing personal census information knowing it to have been previously unlawfully disclosed
- Disclosing without authorisation. information about prisoner
- Misconduct in public office
- Wilfully failing to carry out lawful obligation to the crown
- Wilfully misconducted in judicial or public office
- Misconducted by wilfully neglecting to perform whilst in judicial or public office
- Procure or persuade or attempt to procure or persuade a member of a reserve force (soldier) to desert
- Know that a member of a reserve force (soldier) is about to desert aid or assist him
- Reserve force member (soldier) is deserter procure/persuade him to remain so/assist in rescue from custody
- Procure or persuade member of reserve force (navy or marine) to desert
- Know that member of reserve force (navy/marine) is about to commit offence of desertion aids or assists
- Member of reserve force (navy/ marine) deserter procure/persuade to remain so/assist in rescue from custody
- Procure or persuade member of reserve force (airman) to commit offence of desertion
- Know that member of reserve force (airman) is about to desert aid or assist him
- Member of reserve force (airman) deserter procure/persuade to remain so or assist in rescue from custody
- Procure or persuade reserve force soldier liable to recall to commit offence of desertion
- Procure or persuade reserve force airman liable to recall to commit offence of desertion
- Procure or persuade reserve force naval rating/marine liable to recall to commit offence of desertion
- Know that reserve force soldier liable to recall is about to desert assist him in so doing
- Know that reserve force airman liable to recall is about to desert assist him in so doing
- Know that reserve force naval rating/ marine liable to recall is about to desert assist him in doing so
- Know reserve force soldier liable to recall to be deserter assist to remain so or aid in rescue from custody
- Know reserve force airman liable to recall to be deserter assist to remain so or aid in rescue from custody
- Know navy rating/marine liable to recall to be deserter aid to remain so or assist in rescue from custody
- Know reserve force airman liable to recall absent w/o leave assist to remain so or aid in rescue from



custody

- Fail without reasonable excuse to attend for any duty or leave any such duty before being permitted to do so
- Neglect to perform or negligently perform any duty of any description
- Public nuisance
- Possessing written material which is threatening abusive or insulting
- Possessing a recording of visual images which is threatening abusive or insulting
- Intimidation during trade dispute
- Wilfully break contract knowing or believing the consequences will endanger life or cause serious injury
- Wilfully break contract knowing or believing the consequences will expose property to destruction
- Intimidate a person or wife or children or injure his property by violence or otherwise
- Persistently follow person from place to place
- Hide tools clothes or any other property or deprive or hinder the use thereof
- Watch or beset house/place of business or other property or approach thereto
- With two or more others follow person in a disorderly manner in any street or road
- Using threatening, abusive, insulting words or behaviour
- Distributing writing which is threatening, abusive or insulting
- Displaying writing which is threatening, abusive or insulting
- Using threatening, abusive, insulting words or behaviour w/i to cause fear or provocation of violence
- Distributing any visible representation w/i to cause fear or provocation of violence
- Displaying any visible representation w/i to cause fear or provocation of

violence

- Using threatening, abusive or insulting words or behaviour likely to cause distress
- Using disorderly behaviour likely to cause distress
- Sending letters etc with intent to cause distress or anxiety
- Displaying any visible representation which is threatening, abusive or insulting likely to cause distress
- Distributing or displaying any visible representation with intent to cause fear or to provoke violence
- Use disorderly behaviour or threatening/abusive/insulting words likely to cause harassment alarm or distress
- Displaying any writing sign or other visible representation which is threatening abusive or insulting
- Distribute/display writing/sign which was threatening abusive insulting cause fear/ provocation of violence
- Use threatening abusive insulting words/behaviour or disorderly behaviour to cause harassment/ alarm/distress
- Display threatening abusive insulting writing sign or other representation cause harassment/alarm/distress
- Disorderly conduct at public meeting
- Inciting another to act in a disorderly manner at a public meeting
- Wearing political uniform
- Wearing uniform signifying association with political organisation
- Organiser failing to comply with conditions imposed on public procession
- Participant failing to comply with conditions imposed on public procession
- Inciting participant to contravene conditions imposed on public procession
- Participating in a prohibited public procession

- Organising a prohibited public procession
- Inciting another to take part in prohibited public procession
- Organiser failing to comply with conditions imposed on public assembly
- Participant failing to comply with conditions imposed on public assembly
- Inciting participant to contravene conditions imposed on public assembly
- Engaging in riotous violent or indecent behaviour in a place of worship of any faith
- Failing to give written advance notice of public procession
- Failing to specify required particular about public procession in written advance notice
- Failing to comply with detail of public procession given in written advance notice
- Wantonly disturb inhabitant by pulling/ringing any doorbell or knocking on any door
- Setting fire to fireworks so as to cause obstruction annoyance or danger
- Molest let disturb vex trouble disquiet misuse any clergyman ministering/celebrating any rite/holy order
- Make bonfire in street to obstruction annoyance or danger of residents
- Discharge a stone or other missile to the obstruction/annoyance of residents/passengers
- Order to disperse/leave locality
- Fail to disperse having been directed to do so
- Fail to leave locality having been directed to do so
- Return to locality within relevant period having been directed to leave
- Contravention of a closure notice on premises
- Remain in/enter premises in contravention of a closure notice
- Remained on premises in contravention of a closure order
- Entered premises in contravention of a closure order
- Obstruct a constable/authorised person effecting service of a closure notice
- Permit premises to be open in contravention of closure order
- Personation at election
- Making false service declaration at election
- Bribery at election
- Treating at election
- Using undue influence at election
- Providing money for illegal purposes related to election
- Making agreement for corrupt withdrawal of election petition
- Aid/abet personation at election
- Tampering with nomination papers at election
- Returning or presiding officer, or clerk administering poll, tampering with nomination paper
- Person other than returning/presiding officer, or clerk administering poll, tampering with nomination paper
- Tampering with ballot papers at election
- Returning or presiding officer, or clerk administering poll, tampering with ballot paper
- Person other than returning or presiding officer, or clerk administering poll, tampering with ballot paper
- Breach of security requirement at election
- Incurring election expenses without authorization
- Making false election expenses declaration
- Making corrupt agreement relating to

- withdrawal of election petition
- Making agreement not mentioned in affidavits relating to withdrawal of election petition
  - Person other than candidate or election agent making false election expenses declaration
  - Causing or permitting false statements in nomination papers
  - Knowingly causing or permitting false signature on nomination papers
  - Failing to deliver report of auditor removal/resignation
  - Making false statement to auditor
  - Agent failing to provide information to party about donor
  - Fail to provide information about donation/donor to party
  - Registered party fail to return impermissible donation
  - Treasurer fail to return impermissible donation
  - Treasurer fail to return donation by unidentifiable donor
  - Enter arrangement facilitating impermissible donation
  - Act in furtherance of an arrangement facilitating impermissible donation
  - Give treasurer false information about donation
  - Withhold from treasurer false information about donation
  - Fail to comply with donation reports requirements
  - False declaration in donation report
  - Individual donor fail to report multiple small donations
  - Non individual donor fail to report multiple small donations
  - Deliver out of time complete report declaring multiple donations
  - Failure to declare multiple small donations
  - Make false declaration of campaign expenditure
  - Causing intoxicating liquor to be carried on vehicle (PSV) carrying passengers to or from a sporting event
  - Permit intoxicating liquor to be carried on a vehicle carrying passengers to a sporting event (PSV)
  - Possessing intoxicating liquor on a vehicle (PSV) carrying passengers to or from a sporting event
  - Being drunk on a vehicle (PSV) carrying passengers to or from a sporting event
  - Possessing intoxicating liquor in a sports ground
  - Possessing a disposable drink container in a sports ground
  - Possessing intoxicating liquor while entering a sports ground
  - Possessing intoxicating liquor while trying to enter a sports ground
  - Possessing a disposable drink container while entering a sports ground
  - Possessing a disposable drink container while trying to enter a sports ground
  - Being drunk at a sporting event
  - Being drunk while entering a sports ground
  - Being drunk while trying to enter a sports ground
  - Selling intoxicating liquor at a sports ground
  - Supplying intoxicating liquor at a sports ground
  - Authorising the sale of intoxicating liquor at a sports ground
  - Authorising the supply of intoxicating liquor at a sports ground
  - Failing to close a sports ground bar when required to do so by a constable
  - Failing to keep a sports ground bar closed when required to do so by a constable
  - Causing intoxicating liquor to be carried on a vehicle (not PSV) carrying

- passengers to/from sporting event
- Permit intoxicating liquor to be carried on a vehicle (not PSV) carrying passengers to/from sporting event
  - Possessing intoxicating liquor on a vehicle (not PSV) carrying events passengers to or from a sporting event
  - Being drunk on a vehicle (not PSV) carrying passengers to or from a sporting event
  - Possessing flare or smoke emitting article or substance or firework in a sports ground
  - Possessing firework in sports ground
  - Possessing prohibited article in sports ground
  - Possessing prohibited substance in sports ground
  - Possessing flare or smoke emitting article or substance or firework while entering a sports ground
  - Possessing firework while entering sports ground
  - Possessing prohibited article while entering sports ground
  - Possessing prohibited substance while entering sports ground
  - Possessing flare or smoke emitting article or substance or firework while trying to enter a sports ground
  - Possessing firework while trying to enter sports ground
  - Possessing prohibited article while trying to enter sports ground
  - Possessing prohibited substance while trying to enter sports ground
  - Occasional licence holder selling intoxicating liquor at a sports ground
  - Occasional licence holder authorising the sale of intoxicating liquor at a sports ground
  - Supplying intoxicating liquor to a member or guest of a registered club outside club premises
  - Authorising the supply of intoxicating liquor to a member or guest of registered club outside club premises
  - Nonretail selling of intoxicating liquor at a sports ground
  - Authorising non-retail selling of intoxicating liquor at a sports ground
  - Throwing missile at or towards playing area
  - Throwing missile toward area where spectator or other person may be present
  - Throw missile at designated football match at/towards area where spectators/other persons were or may be
  - Going onto an area adjacent to the playing area to which spectators were not generally admitted
  - Possessing article capable of causing injury in sports ground
  - Possessing article capable of causing injury while entering sports ground
  - Possessing article capable of causing injury while trying to enter sports ground
  - Consume at sports ground liquor sold by, or sale of which was authorised by, occasional licence holder
  - Take from sports ground liquor sold by, or sale of which was authorised by, occasional licence holder
  - Member or guest of registered club consuming intoxicating liquor outside club premises
  - Member or guest of registered club obtaining intoxicating liquor outside club premises
  - Officer of registered club keeping liquor on premises on behalf of club to supply outside premises
  - Consuming non-retail intoxicating liquor sold at sports ground
  - Obtaining non-retail intoxicating liquor sold at sports ground
  - Possessing an article or substance the main purpose of which is to emit a flare smoke or visible gas
  - Being drunk during a designated sporting event

- Intimidation of witness - proceedings other than criminal
- Harming a witness - proceedings other than criminal
- Making false unsworn statement
- Making false statement on oath at non-judicial proceedings
- Making false statement concerning marriage
- Making false statement concerning births
- Making false statement concerning deaths
- Making false statement on matter required by statute
- Making false statutory declaration
- Making false written statement on matter required by statute
- Making false oral statement on matter required by statute
- Making false declaration to obtain professional registration
- Making false statement in statement tendered in evidence
- Wilful making by a sworn witness or interpreter of a false or untrue statement
- Give false unsworn evidence in criminal proceedings
- False statement for purpose of entry in marriage register
- Knowing/wilfully make false statement for purpose of entry in marriage register
- Knowingly/wilfully cause to be made false statement for purpose of entry in marriage register
- Prevent the issue of a certificate/licence to marry by false representation
- Enter into false caveat in respect of declaration under s. 16 Marriage Act 1949
- Make false statement in respect of declaration under s. 27 Marriage Act 1949
- False statement/certificate/declaration re birth/death
- Wilfully make a false answer to a question of a birth/death
- Wilfully make false information concerning registration of birth/death
- Wilfully make a false certificate/declaration relating to registration of births/deaths
- Use/give/send a false certificate/declaration re registration of birth/death
- Make/give/use false certificate/declaration re still born child/body
- Make false statement with intent to have it inserted in register of births/deaths
- Falsely pretend that a child born alive was still-born
- Knowingly/wilfully make a false oath/declaration to procure marriage/certificate/licence
- Withholding information concerning arrestable offence
- Refusal/failure to attend NCIS enquiry or give evidence alter suppress conceal destroy document
- Refusal to swear give evidence produce any document or thing
- Witness refusing to have evidence taken or to produce document or other exhibit
- Publishing matter likely to cause contempt of court
- Breaching confidentiality of a jury
- Tape recording court proceedings without permission
- Contempt of magistrates' court
- Insulting justices
- Interrupting court proceedings
- Contempt
- Breach of probation order
- Breach of community service order
- Breach of suspended sentence supervision order

- Breach of binding over order
- Breach of binding over order pre 1980
- Breach of youth custody supervision order
- Breach of supervision order
- Breach of detention centre supervision order
- Breach of exclusion order from prescribed sports ground
- Breaching exclusion order from prescribed football match
- Entering premises in breach of exclusion order other than from prescribed football match
- Breach of domestic football banning order
- Breach of curfew order
- Breach of YOI supervision order
- Breach of attendance centre order
- Breach of combination order
- Breach of conditional discharge
- Breach of requirements of supervision of person subject to a secure training order
- Breach of licence condition
- Breach of licensed premises exclusion order - entered any licensed premises
- Breach of suspended sentence
- Breach of suspended sentence pre 1973
- Breach of disqualification order - had custody of animal
- Disobeying court order (other than one for payment of money)
- Breach of anti-social behaviour order
- Breach of sex offender order
- Football spectators fail to comply with reporting condition
- Breach of reparation order
- Breach of action plan order
- Breach of drug treatment and testing order
- Fail to comply with international football banning order
- Breach of court order - unauthorised sale/custody of dog
- Breach of court order - unauthorised sale/fail to deliver dog
- Breach of court order - had custody of a dog
- Breach of court order - failed to comply with the requirements imposed under s. 33 of the act
- Breach of licence - return to prison where offence committed during original sentence
- Breach of detention and training order supervision requirement
- Failing to comply with requirement re application for a banning order
- Breach of community rehabilitation order
- Breach of community punishment order
- Breach of community and rehabilitation order
- Breach of exclusion order
- Breach of drug abstinence order
- Breach of travel restriction order
- Breach of travel restriction order - leave united kingdom
- Breach of travel restriction order - outside united kingdom at end of period of prohibition
- Breach of travel restriction order - fail to comply with direction by court to surrender passport
- Breach of interim sex offender order
- Breach of sex offender order made in Scotland
- Breach of sex offender order made in Northern Ireland
- Breach of sex offender restraining order
- Breach of sexual offences prevention order
- Breach of interim sexual offences prevention order

- Breach of foreign travel order
- Breach of risk of sexual harm order or interim order
- Breach of restraining order
- Breach of sexual offences prevention order or interim order
- Breach of sexual offences prevention order or interim order issued in Northern Ireland
- Breach of risk of sexual harm order
- Breach of interim risk of sexual harm order
- Breach of non-molestation order
- Failing to surrender to bail
- Failing to surrender to custody at appointed time
- Failing to surrender to custody as soon as practicable after appointed time
- Agreeing to indemnify sureties
- Fail to surrender to bail
- Assault on police
- Assault on person assisting police
- Assault a constable
- Assault person assisting constable
- Assault person designated/ accredited under part 4 of the act in the execution of his duty
- Assault person assisting person designated/accredited under part 4 of act in execution of duty
- Wasting police time
- Personating police officer
- Impersonating a police officer
- Making statement calculated to suggest that he/she is a police officer
- Doing act calculated to suggest that he/she is a police officer
- Unlawful possession of police uniform
- Unlawfully assume the character of an officer
- Impersonate a police officer
- Make statement/act calculated falsely to suggest that you were a police officer
- Make statement calculated falsely to suggest that you were a police officer
- Do act calculated falsely to suggest that you were a police officer
- Wear police uniform calculated to deceive
- Not being special constable or member of police force had in your possession an article(s) of police uniform
- Impersonate a person designated/ accredited under part 4 of the act
- Make statement do act to suggest you were a person designated/ accredited under part 4 of the act
- Make statement do act to suggest you had powers of person designated/accredited under part 4 of the act
- Obstructing police
- Resisting constable
- Obstructing person assisting constable
- Wilfully obstructing railway policeman in the execution of his duty
- Resist or obstruct constable
- Resist or obstruct person assisting constable
- Resist/wilfully obstruct person designated/accredited under part 4 of act in execution of duty
- Resist/obstruct person assisting person designated/accredited under part 4 of act in execution of duty
- Refusing to assist a constable
- Violent behaviour in a police station
- Remain unlawfully at large after expiry of period of temporary release
- Knowing or believing an order of recall has been made fail to comply with order and remains at large
- Immigration - assisting detained person to escape

- Immigration - assisting detained to escape from a detention centre
- Immigration - assisting a detained person in attempting to escape from a detention centre
- Immigration - help escape of person from detention centre
- Immigration - with intent to facilitate escape of a detained person conveyed an item into a detention centre
- Immigration - with intent to facilitate escape of person detained sent an item into a detention centre
- Immigration - with intent to facilitate escape of detained person placed an item outside a detention centre
- Obtaining information of spent conviction from official record by fraud
- Obtaining information of spent conviction from official record by dishonesty
- Obtaining information of spent conviction from official record by bribery
- Coroner's corruption
- Coroner's wilful neglect of duty
- Coroner's misbehaviour in discharge of duty
- Obstructing coroner in the execution of duty
- Assault on an officer of a county court while in the execution of his duty
- Rescuing goods seized in execution under process of a county court
- Attempting to rescue goods seized in execution under process of a county court
- Giving a false certificate for the service of a summons
- Giving a false certificate for the service of a court process
- Delivering a copy of a paper falsely purporting to be a county court summons
- Delivering a copy of a paper falsely purporting to be a county court process
- Pretending to act under the authority of a county court
- Place liquor/tobacco outside prison with intent it shall come into the possession of a prisoner
- Officer allowing liquor/tobacco to be sold in prison.
- Officer allowing liquor/tobacco to be used in a prison.
- Convey spirits into prison.
- Attempt to convey spirits into prison.
- Convey tobacco into prison.
- Attempt to convey tobacco into prison.
- Attempting to convey an article to a prisoner
- Conveying an article to a prisoner
- Immigration supply alcohol into detention centre
- Immigration brought alcohol into detention centre
- Immigration - attempt to bring alcohol into detention centre
- Immigration - place alcohol outside detention centre with intent it should come into possession of detainee
- Immigration - allow alcohol for sale or use in detention centre
- Convey anything into/out of detention centre or to detained person contrary to detention centre rules
- Place anything outside detention centre intending it to come into possession of detained person
- Impeding search by customs officer
- Prevent detention/rescue person detained engaged in committing any offence under s. 18(1)(a)(b) or (c)
- Exercise of right of audience/conduct litigation or /contemplate proceedings when not entitled to do so
- Acting in purported exercise of any right granted to authorised practitioners when not authorised to do so



- Disclosure of criminal records
- Disclose criminal record obtained by a registered body
- Disclose criminal record obtained by an unregistered body
- Disclosing criminal record
- Disclosing criminal record obtained by an individual
- Disclose unlawfully disclosed criminal record
- Possessing opium utensils
- Possessing pipe made or adapted for smoking opium
- Possessing utensil made or adapted for smoking opium
- Possessing utensil used for preparing opium for smoking
- Possessing pipe or utensil made or adapted for smoking opium
- Obstructing powers of search for drugs
- Failing to comply with Secretary of States regulation regarding documentation, record keeping and labelling
- Frequenting place used for purpose of smoking opium
- Concealing article from person acting in exercise of powers under this section
- Failing to produce article to person acting in exercise of powers under this section
- Occupier allowing premises to be used for smoking cannabis
- Selling medicinal product without or contrary to “product licence”
- Supplying medicinal product without or contrary to ‘product licence”
- Manufacturing medicinal product without or contrary “manufacturer’s licence”
- Offering to sell medicinal product wholesale without or contrary to “manufacturer’s licence”
- Unlawfully supplying medicinal product not on general sales list
- Retailing medicinal product without or contrary to prescription required under order of Secretary of State
- Person, other than practitioner or person under direction, administering medicine w/o prescription
- Selling medicinal product, which is not of the nature and quality demanded by purchaser
- Possession of a medicinal product knowing it to be marketed without the relevant authorisation
- Supply of a medicinal product knowing it to be marketed without the relevant authorisation
- Placing a medicinal product on the market without holding an EC or UK marketing authorisation
- Selling/supplying medicinal product so as to contravene any requirements applicable to that product
- Failure to keep proper records
- Failure to produce records for inspection
- Possess medicinal product for supply without authorisation
- Supply sell manufacture assemble procure sale supply manufacture assembly of medicinal product w/o authority
- Detainee fail/refuse to provide sample of fluid for purpose of ascertaining whether class a drug is in body
- Supplying an intoxicating substance to a person under 18
- To supply an intoxicating substance to a person under 18
- Supplying an intoxicating substance to a person acting on behalf of someone under 18
- Offering to supply an intoxicating substance to a person acting on behalf of someone under 18
- Farmer who has created agricultural charge intentionally failing to pay to bank proceeds from sale.

- Farmer who has created agricultural charge removing property subject to charge from holding
- Farmer who has created agricultural charge allowing removal of property subject to charge from holding
- Disclosing without authorisation restricted information obtained under this act
- Misrepresenting systems of classification of carcasses
- Falsifying registration returns and records of a levy scheme
- Disclosing without authorisation information acquired under levy scheme
- Disclosing without authorisation information relating to land acquired under afforestation scheme
- Disclosing without authorisation contents of corn returns
- Misconduct in action with intent to assist the enemy
- Misconduct in action other than with intent to assist the enemy
- Knowingly and inexcusably committing or omitting to do act with intent to assist the enemy
- Knowingly and inexcusably committing or omitting to do act other than with intent to assist the enemy
- Obstructing operation with intent to assist the enemy
- Obstructing operation other than with intent to assist the enemy
- Giving false air signals with intent to assist the enemy
- Giving false air signals other than with intent to assist the enemy
- Altering air signals or apparatus giving air signals with intent to assist the enemy
- Altering air signals or apparatus giving air signals other than with intent to assist the enemy
- Interfering with air signals or apparatus giving air signals with intent to assist the enemy
- Interfering with air signals or apparatus giving air signals other than with intent to assist the enemy
- Stealing from person killed, wounded or captured in warlike operation or operation to preserve law and order
- Searching, with intent to steal, person killed, wounded or captured in operation.
- Stealing property left exposed or undefended as a result of operation.
- Taking, other than for public service, vehicle, equipment or stores abandoned by enemy
- Mutinying with aim of refusing, avoiding or impeding duty, service or operation against the enemy
- Inciting mutiny with aim of refusing, avoiding or impeding duty, service or operation against the enemy
- Mutinying other than with aim of refusing, avoiding or impeding duty, service or operation against the enemy
- Inciting mutiny other than with aim of refusing, avoiding or impeding duty service or operation.
- Failing to suppress mutiny with intent to assist the enemy
- Failing to suppress mutiny other than with intent to assist the enemy
- Using violence to a superior
- Wilfully or through neglect disobeying lawful command
- Obstructing provost officer
- Refusing to assist provost officer
- Disobeying standing order
- Deserting
- Being absent without leave
- Being drunk (on or off duty)
- Fighting
- Using threatening, abusive, insulting or provocative words or behaviour likely to cause disturbance
- Wilfully damaging public or service property

- Wilfully causing loss of public or service property
- Making an official document or record which is false
- Making in official document or record an entry which is false
- Tampering with whole or part of official document or record
- Failing to make entry on official document or record with intent to deceive
- Ill-treating subordinate
- Conducting oneself disgracefully - indecency
- Conducting oneself disgracefully - cruelty
- Conducting oneself disgracefully - unnatural act
- Engaging in conduct or neglect prejudicial to good order and air-force discipline
- Falsely pretending to be a deserter
- Procuring or persuading person subject to act to desert
- Procuring or persuading person subject to act to be absent without leave
- Assisting desertion
- Assisting being absent without leave
- Procuring or persuading person subject to act to remain a deserter
- Procuring or persuading person subject to act to remain absent without leave
- Assisting person subject to act to remain a deserter
- Assisting person subject to act to remain absent without leave
- Assisting in rescue of deserter from custody
- Assisting in rescue of absentee from custody
- Obstructing member of regular forces in execution of duty
- Producing in person subject to this act sickness or disability to avoid military service
- Supplying drug or preparation for person subject to this act to avoid military service
- Unlawfully purchasing military stores
- Illegally dealing in official documents relating to pay, pensions, mobilisation etc.
- Unlawfully using decoration
- Unlawfully dealing in decorations
- Stealing property left exposed or undefended as a result of operation.
- Engaging in conduct or neglect prejudicial to good order and army discipline
- Sleeping whilst on guard duty
- Misapplying public or service property
- Use force against a person on guard duty
- Use insubordinate language
- Knowingly or recklessly providing notice or certificate which is materially false
- Disclosing information without authorisation
- Refusing to furnish information
- Recklessly or wilfully furnishing false information
- Falsely certifying document or article to be true copy
- Contravening prohibition of films in production of which suffering has been caused to animals
- Furnishing false or misleading information in purported compliance with part ii of this act
- Person, whose name is not on register of auditors kept under s. 35, describing self as an auditor.
- Body, which is not a recognised supervisory or qualifying body describing itself as such.
- Neglecting to provide food, clothing, medical aid or lodging for servant or apprentice
- Procuring on false pretence or

- representation a person under 18 to go abroad to perform for profit
- Allowing person under 18 to go abroad to perform for profit
- Procuring child to take part in entertainment without licence
- Causing child to take part in entertainment without licence
- Parent or guardian allowing child to take part in entertainment without licence
- Water undertaker fail to provide water supply and pressure at fire service required for fire fighting
- Use fire hydrant for hydrant for purpose other than fire fighting/that of fire authority authorised purpose
- Fail to give notice re works supply of water/affecting fire hydrant
- Obstruct/interfere with employee of fire authority
- Obstruct the exercise of a s. 45 power
- Fail to provide facility/information/document/record/other assistance under s. 46(1)(b)
- Sending postal packet with offensive words on cover
- Sending postal packet with obscene words on cover
- Attempting to send postal packet with offensive words on cover
- Attempting to send postal packet with obscene words on cover
- Contravene Secretary of State's order under ss. 12 or 13 concerning depositing or importing shellfish
- Knowingly/recklessly make false or misleading statement to procure certificate
- Knowingly use false or misleading document to procure certificate
- Knowingly withhold information to procure certificate
- Person without right of entry disclosing officially obtained material re manufacturing process/trade secret
- Person with right of entry under s. 324 Disclosing information re manufacturing process or trade secret
- Failing to comply with requirement of Secretary of State for information
- Knowingly make misstatement in purported compliance with requirement of Sec. of State for information
- Baiting animal

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1776/2012

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Parliament Buildings  
Stormont Estate  
Belfast  
BT4 3XX

07 November 2012

Dear Christine,

**REGISTERED INTERMEDIARIES SCHEMES: AMENDMENT TO THE  
CRIMINAL JUSTICE BILL**

At its meeting on 11 October, the Committee considered a letter from the Department on a proposed amendment to the Criminal Justice Bill to make additional legislative provision in relation to the use of registered intermediaries.

The letter advised that there is currently provision (through Article 6 of the Criminal Evidence (Northern Ireland) Order 1999) for a statutory notice to be issued to a specified court directing that it provides a relevant special measure for vulnerable witnesses. The Article also provides for that notice to be withdrawn, which would cease the use of the special measure. However, the making of a similar provision in respect of vulnerable defendants (through section 12 of the Justice Act (Northern Ireland) 2011) had been overlooked. The Department

FROM THE OFFICE OF THE JUSTICE MINISTER



proposes to address this omission by making an amendment to the Criminal Justice Bill.

During the session on 11 October, Committee Members indicated that they would like sight of the draft clause by mid November. The draft clause is attached, for the information of Members, at **Appendix A**. Members will wish to note that this makes provision for the issue and withdrawal of notices in relation to the examination of vulnerable defendants through an intermediary.

The Department remains fully committed to the delivery of Registered Intermediaries Schemes for both witnesses and defendants, and has undertaken to keep Members updated on both the operation of the pilot schemes and our future plans to extend the schemes.

  
**BARBARA McATAMNEY**  
**DALO**

**ENC**

**APPENDIX A**

**DRAFT CLAUSE ON REGISTERED INTERMEDIARIES**

Criminal Justice Bill

Amendments to be move at Consideration Stage

By the Minister of Justice

New Clause

After clause 7 insert—

**‘Examination of accused through intermediary**

—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.

(2) At the beginning of paragraph (2) insert “Subject to paragraph (2A),”.

(3) After paragraph (2) insert—

“(2A) A court may not give a direction under paragraph (3) unless—

(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court, and

(b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn.”.’

Clause 9, page 8, line 2, after ‘sections 2’ insert ‘, (*Examination of accused through intermediary*)’

Long title

Leave out ‘and to’ and insert ‘; to’

Long title

At end insert ‘; and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999.’

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

**Justice**

[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90528121  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Your ref:

Our ref: SUB/1793/2012

Mr Paul Givan MLA  
Chair of the Committee for Justice  
Northern Ireland Assembly  
Room 242  
Parliament Buildings  
Stormont  
Belfast BT4 3XX

8 November 2012

*Dea Paul*

**PROPOSED AMENDMENT TO REPEAL THE COMMON LAW OFFENCE OF SCANDALISING THE COURT**

Thank you for your letter of 5 November 2012, requesting further details of the work that will be undertaken in relation to the consideration of the common law offence of scandalising the court, and the timescale within which that work will be completed.

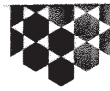
As I stated in my earlier correspondence with you on this issue, England and Wales have had the benefit of a consultation on this matter. I would want to ensure that we also take the opportunity in Northern Ireland to seek and consider views on the questions raised by this issue. I plan therefore, subject to any other competing priorities, to bring forward a consultation on the issue in the New Year.

I trust this is helpful.

*Yours*

**DAVID FORD MLA**  
Minister of Justice





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[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1834/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Room 242  
Parliament Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3XX

15 November 2012

Dear Christine

**Criminal Justice Bill: Miscellaneous Provision on Statutory Prohibitions on holding Firearms**

Thank you for your letter of 5 November 2012. The Committee has asked for the Department's views on a request made by Ian McCrea MLA to include a miscellaneous provision on statutory prohibitions on holding firearms in the Criminal Justice Bill. Mr McCrea would like the current tariffs on prohibition to be varied to reflect the type and seriousness of the offence. At present the system of prohibition operates for prison sentences of three months or more (including suspended sentences) rather than on the offence itself.

Before commenting on the proposal, it might be helpful to set out the current position. The legislation, Article 63 of the Firearms (Northern Ireland) Order 2004, prohibits a person from purchasing, acquiring or possessing a firearm and ammunition at any time if he has been sentenced to imprisonment, or detention in



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a young offenders centre, for a term of three years or more. It similarly prohibits a person who has been sentenced to imprisonment, or detention in a young offenders centre or juvenile justice centre, for a term of three months or more but less than three years, for a period of 8 years from the date of conviction.

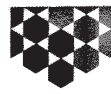
A prohibited person may, however, apply for the removal of a prohibition. The underlying principle is that those who receive a prison sentence of three months or more are not suitable to hold a firearm unless strong evidence can be produced to the contrary. The Minister, on an application from a prohibited person, will reach a decision using all available information including –

- (a) information on the offence that has led to the prohibition;
- (b) information on all other criminal convictions;
- (c) the applicant's grounds for removing the prohibition - these must show exceptional circumstances;
- (d) character references, if provided by the applicant; and
- (e) a commentary from the Chief Constable.

The Minister is content that he has access to all the information he requires to enable him to make an informed decision in these cases. Five of 44 cases considered since the devolution of justice have led to the removal of the prohibition.

It is also worth highlighting that any changes would require the agreement of the Secretary of State for Northern Ireland as prohibitions for offences relating to national security are referred to her for consideration.

Mr McCrea's approach is the first time we have been made aware of a request to move to an offence based approach. A difficulty in moving to such a system is the



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problem of “ranking” offences. The development of such an approach is likely to require significant work.

Should the Committee conclude that Article 63 needs to be reviewed then the Minister would suggest that a proper consultation should be conducted to allow him and others to give serious consideration to the proposals and what could be very significant consequences. This could not be concluded in time for the current Criminal Justice Bill.

**BARBARA McATAMNEY**  
**DALO**

FROM THE OFFICE OF THE JUSTICE MINISTER



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Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref: SUB/1881/2012

Christine Darrah  
Clerk to the Committee for Justice  
Room 242  
Parliament Buildings  
Stormont  
Belfast, BT4 3XX

21 November 2012

Dear Christine

**Criminal Justice Bill: response to issues on human trafficking raised at the evidence session on 8 November.**

When giving evidence to the Committee on 8 November on clauses 5 and 6 in the Criminal Justice Bill on human trafficking, officials agreed to come back to the Committee on three issues which had been raised during the evidence session.

**DHSSPS action on the letters from CARE, NICCY and NSPCC**

As officials explained, responsibility for the care of children who are trafficked falls to the Department of Health, Social Services and Public Safety (DHSSPS).

DHSSPS has been asked what action the Department is taking in relation to these letters and advice will be forwarded to the Committee as soon as this is received.

FROM THE OFFICE OF THE JUSTICE MINISTER



**The joint PSNI / Barnardo's initiative**

PSNI and Barnardo's have launched a joint initiative to tackle child sexual exploitation in South and East Belfast. The initiative involves Barnardo's working alongside the PSNI Public Protection Unit to provide early intervention both for young people who are reported to the PSNI as missing and where there are other concerns or indications of sexual exploitation.

It is the first time such a joint approach has been introduced in Northern Ireland. It is jointly funded by Barnardo's NI and by PSNI from assets which have been recovered from criminals and returned to the PSNI through the Assets Recovery Incentivisation Scheme.

**Use of the term 'trafficking people'**

The PSNI's response to the Committee on the Bill noted what it considered to be inconsistent use of the terms 'human trafficking' and 'trafficking people'. PSNI felt that more consistency in terminology would ensure that the Bill reflects accepted terminology and would avoid confusion with the offence of 'people smuggling'. The Committee asked for comments on the point.

In putting forward their view PSNI appear to be referring to the long title to the Criminal Justice Bill, which reads: "Amend the law relating to ... and human trafficking and to ...". PSNI contrast this with the terminology used as clause headers in the Bill which are "Trafficking people for exploitation", "Trafficking people for sexual exploitation" and "Trafficking people for other exploitation".

In fact, a range of phrases relating to the offence of human trafficking are used interchangeably throughout legislative instruments applying here as well as in England and Wales, Scotland and the Republic of Ireland. These include "trafficking people for exploitation", "trafficking people for sexual exploitation",

FROM THE OFFICE OF THE JUSTICE MINISTER



“trafficking people for labour and other exploitation”, “people trafficking” and “trafficking of a minor”.

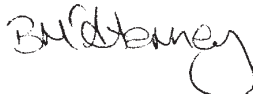
Similar variances apply in international instruments, for example in the EU Directive which refers to “human trafficking” and “trafficking in human beings”, and in the UN Protocol which favours the terms “trafficking in persons”, “victims of trafficking” and “exploitation of persons”.

In our view “human trafficking” is a well understood term or description in the Directive and in the Protocol, and its use in the long title to the Bill provides a concise and easily understood description of the specific sexual and labour exploitation offences arising from the trafficking of human beings.

“People smuggling” is defined in Annex III of the UN Convention. It is clearly different from human trafficking. Interestingly, as with variations in the terms to refer to trafficking, there are also different ways of referring to “people smuggling” such as “migrant smuggling” or, increasingly, “human smuggling”.

We do not consider that the references in the Bill are going to create confusion in the human/migrant/people smuggling area. We note that UKBA, SOCA and others have not identified a concern.

I hope this is helpful.



**BARBARA MCATAMNEY**  
**DALO**

FROM THE OFFICE OF THE JUSTICE MINISTER



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Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1885/2012

Christine Darrah  
Clerk to the Justice Committee  
Northern Ireland Assembly  
Parliament Buildings  
Stormont, Ballymiscaw  
Belfast BT4 3XX

22 November 2012

Dear Christine

**Criminal Justice Bill: response from the Department of Health, Social Services and Public Safety to health related issues on human trafficking raised at the evidence session on 8 November**

Department of Justice officials, when giving evidence to the Committee on 8 November on clauses 5 and 6 in the Criminal Justice Bill, agreed to come back to the Committee on three issues which were raised during the evidence session. I have already responded on two of these issues in my letter of 21 November. I am now providing a response (attached) from the Department of Health, Social Services and Public Safety regarding the issues raised by Christian Action Research and Education (CARE), the Commissioner for Children and Young People (NICCY) and National Society for the Prevention of cruelty to Children (NSPCC).

I hope the Committee find this helpful.

  
**BARBARA McATAMNEY**  
DALO

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**Response from the Department of Health, Social Services and Public Safety to issues raised by CARE, NICCY and NSPCC with the Justice Committee, November 2012**

In relation to NICCY's general comments on the implementation of the European Union Directive on preventing and combating human trafficking and protecting its victims, the Department of Health, Social Services and Public Safety (DHSSPS) is continuing to review existing legislation to ensure compliance with the EU Directive. DHSSPS is also liaising with the Department of Justice (DOJ) and the Home Office to determine if there is a requirement for any secondary legislation to ensure compliance.

CARE in Northern Ireland has also raised some concerns in respect of the support for the victims of human trafficking. Whilst it acknowledges the support available to victims of human trafficking being provided by the Migrant Help and Women's Aid, the organisation indicates that it is not clear if this support would be available to children. DHSSPS would like to take this opportunity to clarify that the support provided by Migrant Help and Women's Aid is available to adult victims of human trafficking only. However, recovered child victims of trafficking and those suspected of being victims of trafficking are deemed to be "children in need" under the *Children (Northern Ireland) Order 1995* and therefore the responsibility for provision of protection, care and support to these children, including access to health and social care, already falls to Health and Social Care (HSC) Trusts.

The CARE in Northern Ireland briefing paper also considers Articles 13 – 16 of the EU Directive on Human Trafficking which relate to general provisions on assistance, support and protection measures for child victims of human trafficking. The organisation is especially concerned that the need for a Guardian or Representative for Trafficked Children (Article 14(2) & 16(3)) should be addressed.

DHSSPS would like to advise the Justice Committee that statutory provision already exists in Northern Ireland for the appointment of a Guardian ad Litem

12/460513



(GAL) who will appoint a legal representative to act on behalf of the child under the requirements of the Children (Northern Ireland) Order 1995; under Article 66 (Authority's Duty to Investigate) and Article 60 (appointment of a GAL by the Court), any young person who is trafficked or suspected of being trafficked will have a named allocated social worker appointed with case management responsibility and, on application by the Trust to the Court to secure a Legal Order in respect of the child, a GAL will be appointed by the Court. In the absence of a GAL, the Court can appoint a solicitor for a child.

Also, the Children (Northern Ireland) Order 1995 provides for the appointment by a HSC Trust of an independent visitor for a looked after child in circumstances where the child has no or infrequent contact with a parent or any person who has parental responsibility for him. The person appointed by the HSC Trust will have the duty of visiting, advising and befriending the child. In the case of former looked after children between the ages of 16 and 21 (children who have left the care system), a HSC Trust is required to appoint a personal adviser for the young person and prepare a pathway plan for him/her. The HSC Trust is also required to carry out an assessment of the young person's needs with a view to determining and providing appropriate advice, assistance and support.

In addition, the DHSSPS proposes to place the provision of advocacy services on a statutory basis for those children and young people who are, or have been, looked after. Provision will be made in an Adoption and Children Bill, which is intended to be introduced in the Northern Ireland Assembly in the current mandate.

CARE in Northern Ireland has expressed the hope that the Justice Committee will recommend further legislative proposals to improve the tackling and prevention of trafficking in Northern Ireland and commends Lord Morrow's Draft Private Member's Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill to the Committee.

12/460513

DHSSPS has responded to the consultation on Lord Morrow's Private Member's Bill and advised that, in relation to child victims of human trafficking, the Health Minister is satisfied that DHSS&PS is fully compliant in respect of child victims and that further statutory provision is not required for support services for child victims. However, subsequent to a meeting with Lord Morrow, DHSSPS officials are now giving further consideration to whether or not the Department is fully compliant in terms of an independent guardian system for child victims of human trafficking or will be when the proposed advocacy provisions of the Adoption and Children Bill are enacted.

The submission presented to the Justice Committee by the NSPCC refers to a recommendation that professionals who come into contact with separated/trafficked children in Northern Ireland should be trained to understand and effectively respond to their needs. Training for professional staff in relation to victims of human trafficking (adult and children) is currently being developed by the Health Social Care Board (HSCB). The HSCB and the HSC Trusts have already moved forward on this and relevant staff in the statutory sector have already been re-trained in the Merton Age Assessment.

A conference entitled "Safeguarding Adults and Children in a Culturally Diverse Society" was held in October 2012. This conference was jointly planned and hosted by the PSNI and the Health and Social Care Board, with support from the Northern Ireland Adult Safeguarding Partnership, the Safeguarding Board for Northern Ireland and DHSSPS. The conference provided an opportunity to raise awareness in a multidisciplinary/conjoined way to key professionals of the emerging issues arising in Northern Ireland as it becomes a more culturally diverse society. Human trafficking and other issues such as forced marriage, honour based violence, female genital mutilation and ritual abuse/witchcraft, all of which are coming to the fore elsewhere in the United Kingdom featured in the conference programme. The DOJ and DHSSPS jointly developed guidance on Working Arrangements for the Welfare and Protection of Adult Victims of Human Trafficking which was also launched at the conference.

12/460513

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272

[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1897/2012

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
BT4 3XX

 November 2012

Dear Christine,

**CRIMINAL JUSTICE BILL: MINISTERIAL AMENDMENT TO THE  
BIOMETRIC RETENTION FRAMEWORK**

In clause-by-clause consideration of the biometric provisions in the Criminal Justice Bill on 15 November, the Committee asked for sight of draft new clauses and amendments that the Minister proposes to move at Consideration Stage. These are attached at Annex A. For convenience, an extract from the Bill showing Schedules 2 and 3 with the new clauses and amendments incorporated as tracked changes is attached at Annex B.

Please note that all Ministerial amendments are subject to the agreement of Executive colleagues, which has not yet been obtained. The Attorney General's

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advice on compliance with the European Convention on Human Rights has been sought.

*Barbara McAtamney*

**BARBARA McATAMNEY**  
**DALO**

**Enc**

ANNEX A

Criminal Justice Bill: Biometric Retention Framework  
Amendments to be move at Consideration Stage  
By the Minister of Justice

**Schedule 2**, page 15, line 14

Leave out from ‘the conclusion’ to end of line 17 and insert ‘the Chief Constable determines that the material is of no evidential value in relation to—

- (a) the investigation of the offence; or
- (b) proceedings against any person for the offence.’

**Schedule 2**, page 15, line 41

Leave out from beginning to end of line 3 on page 16 and insert ‘and

- (c) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under Article 63DA to the retention of the material.’

**Schedule 2**, page 16, line 37

Leave out paragraph (13)

**Schedule 2**, page 17,

Leave out lines 12 and 13 and insert—

**‘Retention of Article 63B material by virtue of Article 63D(5): consent of Commissioner**

63DA.—(1) The Chief Constable may apply under paragraph (2) or (3) to the Commissioner appointed under Article 63D(11) for consent to the retention of Article 63B material which falls within Article 63D(5)(a) and (b).

(2) The Chief Constable may make an application under this paragraph if the Chief Constable considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—

- (a) under the age of 18,
- (b) a vulnerable adult, or
- (c) associated with the person to whom the material relates.

(3) The Chief Constable may make an application under this paragraph if the Chief Constable considers that—

- (a) the material is not material to which paragraph (2) relates, but
- (b) the retention of the material is necessary in the interests of public protection.

(4) The Department of Justice may by order amend paragraph (2) or (3).

(5) The Commissioner may, on an application under this Article, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.

(6) But where notice is given under paragraph (7) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

(7) The Chief Constable must give to the person to whom the material relates notice of—

- (a) an application under this Article, and
- (b) the right to make representations.

(8) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents), a notice under paragraph (7) may, in particular, be given to a person by sending it to the person by email or other electronic means.

(9) The requirement in paragraph (7) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the Chief Constable.

(10) An application or notice under this Article must be in writing.

(11) In this Article—

“victim” includes intended victim,

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise,

and the reference in paragraph (2)(c) to a person being associated with another person is to be read in accordance with Article 3(3) to (6) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.’

**Schedule 2**, page 19, line 14, at end insert—

**‘Retention of Article 63B material: persons given a penalty notice**

63HA.—(1) This Article applies to Article 63B material which—

- (a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) Act 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and
- (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.

(2) The material may be retained—

- (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
- (b) in the case of a DNA profile, for a period of 2 years beginning with—
  - (i) the date on which the DNA sample from which the profile was derived was taken, or
  - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.’

**Schedule 3**, page 23, line 33

At end insert—

‘and, if Article 63H applies in relation to that person, that person shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.

(1A) Where—

- (a) a discretionary youth conference under Part 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to a child and an offence; and
- (b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, determines not to institute proceedings against the child in respect of the offence or, as the case may be, not to continue proceedings already instituted against the child in respect of the offence,

this Part applies, in relation to the child and the offence, as if the child had been convicted of the offence and, if Article 63H applies in relation to the child, the child shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.’

**Schedule 3**, page 24, line 6

Leave out from beginning to “18(8)(b)” in line 9 and insert—

‘5. In Article 89 (orders and regulations) after paragraph (2) insert—

“(2A) An order under Article 63DA(4) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

*The Counter-Terrorism Act 2008 (c. 28)*

6. In section 18(8)(c)’

ANNEX B

SCHEDULE 2

ARTICLES 63B TO 63O OF THE POLICE AND CRIMINAL EVIDENCE (NORTHERN IRELAND) ORDER 1989, AS INSERTED [S1A]

**“Destruction of fingerprints and DNA profiles: basic rule**

63B.—(1) This Article applies to—

(a) fingerprints—

- (i) taken from a person under any power conferred by this Part, or
- (ii) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police, and

(b) a DNA profile derived from a DNA sample taken as mentioned in sub-paragraph (a)(i) or (ii).

(2) Fingerprints and DNA profiles to which this Article applies (“Article 63B material”) must be destroyed unless the material is retained under any power conferred by Articles 63C to 63J (including those Articles as applied by Article 63K).

(3) In addition, Article 63B material must be destroyed if—

(a) it is not being retained under the power conferred by Article 63C; and

(b) it appears to the Chief Constable that—

- (i) the taking of the fingerprints or, in the case of a DNA profile, the taking of the sample from which the DNA profile was derived, was unlawful, or
- (ii) the fingerprints were taken, or in the case of a DNA profile, was derived from a sample taken, from a person in connection with that person’s arrest and the arrest was unlawful or based on mistaken identity.

(4) Article 63B material which ceases to be retained under a power mentioned in paragraph (2) may continue to be retained under any other such power which applies to it.

(5) Nothing in this Article prevents a speculative search, in relation to Article 63B material, from being carried out within such time as may reasonably be required for the search if the Chief Constable considers the search to be desirable.

**Retention of Article 63B material pending investigation or proceedings**

63C.—(1) This Article applies to Article 63B material taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence in which it is suspected that the person to whom the material relates has been involved.

(2) The material may be retained until ~~the Chief Constable determines that the material is of no evidential value in relation to—~~

~~(a) the investigation of the offence; or~~

~~(b) proceedings against any person for the offence.~~

**Deleted:** the conclusion of the investigation of the offence or, where the investigation gives rise to proceedings against any person for the offence, until the conclusion of those proceedings.

**Retention of Article 63B material: persons arrested for or charged with a qualifying offence**

63D.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is arrested for, or charged with, a qualifying offence, but is not convicted of that offence, and



- (b) was taken (or in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (2) If the person has previously been convicted of a recordable offence which is not an excluded offence, or is so convicted before the material is required to be destroyed by virtue of this Article, the material may be retained indefinitely.
- (3) Otherwise, material falling within paragraph (4) or (5) may be retained until the end of the retention period specified in paragraph (6).
- (4) Material falls within this paragraph if it—
- (a) relates to a person who is charged with a qualifying offence but is not convicted of that offence, and
  - (b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.
- (5) Material falls within this paragraph if—
- (a) it relates to a person who is arrested for a qualifying offence but is not charged with that offence,
  - (b) it was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, and
  - (c) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under Article 63DA to the retention of the material.
- (6) The retention period is—
- (a) in the case of fingerprints, the period of 3 years beginning with the date on which the fingerprints were taken,
  - (b) in the case of a DNA profile, the period of 3 years beginning with the date on which the DNA sample from which the profile was derived was taken (or, if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken).
- (7) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order extending the retention period.
- (8) An application for an order under paragraph (7) must be made within the period of 3 months ending on the last day of the retention period.
- (9) An order under paragraph (7) may extend the retention period by a period which—
- (a) begins with the end of the retention period; and
  - (b) ends with the end of the period of 2 years beginning with the end of the retention period.
- (10) The following persons may appeal to the county court against an order under paragraph (7), or a refusal to make such an order—
- (a) the Chief Constable;
  - (b) the person from whom the material was taken.
- (11) The Department of Justice must appoint a Commissioner to be known as the Northern Ireland Commissioner for the Retention of Biometric Material.
- (12) The Commissioner is to hold office in accordance with the terms of the Commissioner's appointment; and the Department of Justice may—
- (a) pay in respect of the Commissioner any expenses, remuneration or allowances that the Department may determine; and

**Deleted:** (c) any prescribed circumstances apply, and<sup>4</sup>  
 (d) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under paragraph (13) to the retention of the material.

(b) after consultation with the Commissioner, provide the Commissioner with such staff, accommodation, equipment and other facilities as the Department considers necessary for the carrying out of the Commissioner's functions.

(14) In this Article—

“custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008;

“excluded offence”, in relation to a person, means a recordable offence—

(a) which—

(i) is not a qualifying offence,

(ii) is the only recordable offence of which the person has been convicted, and

(iii) was committed when the person was aged under 18, and

(b) for which the person was not given a custodial sentence of 5 years or more.

**Deleted:** (13) The Commissioner may, on an application made by the Chief Constable, consent to the retention of material which falls within paragraph (5)(a), (b) and (c) if the Commissioner considers that it is appropriate to retain the material, and an order under paragraph (5)(c) may, in particular, make provision about the procedure to be followed in relation to any application to the Commissioner under this paragraph.¶

**Deleted:** ¶  
“prescribed” means prescribed by order made by the Department of Justice

Retention of Article 63B material by virtue of Article 63D(5): consent of Commissioner

63DA.—(1) The Chief Constable may apply under paragraph (2) or (3) to the Commissioner appointed under Article 63D(11) for consent to the retention of Article 63B material which falls within Article 63D(5)(a) and (b).

(2) The Chief Constable may make an application under this paragraph if the Chief Constable considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—

(a) under the age of 18,

(b) a vulnerable adult, or

(c) associated with the person to whom the material relates.

(3) The Chief Constable may make an application under this paragraph if the Chief Constable considers that—

(a) the material is not material to which paragraph (2) relates, but

(b) the retention of the material is necessary in the interests of public protection.

(4) The Department of Justice may by order amend paragraph (2) or (3).

(5) The Commissioner may, on an application under this Article, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.

(6) But where notice is given under paragraph (7) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

(7) The Chief Constable must give to the person to whom the material relates notice of—

(a) an application under this Article, and

(b) the right to make representations.

(8) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954 (service of documents), a notice under paragraph (7) may, in particular, be given to a person by sending it to the person by email or other electronic means.

(9) The requirement in paragraph (7) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the Chief Constable.

(10) An application or notice under this Article must be in writing.

(11) In this Article—

“victim” includes intended victim,

“vulnerable adult” means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise,

and the reference in paragraph (2)(c) to a person being associated with another person is to be read in accordance with Article 3(3) to (6) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

**Retention of Article 63B material: persons arrested for or charged with a minor offence**

63E.—(1) This Article applies to Article 63B material which—

(a) relates to a person who—

(i) is arrested for or charged with a recordable offence other than a qualifying offence,

(ii) if arrested for or charged with more than one offence arising out of a single course of action, is not also arrested for or charged with a qualifying offence, and

(iii) is not convicted of the offence or offences in respect of which the person is arrested or charged; and

(b) was taken (or in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence or offences in respect of which the person is arrested or charged.

(2) If the person has previously been convicted of a recordable offence which is not an excluded offence, the material may be retained indefinitely.

(3) In this Article “excluded offence” has the meaning given by Article 63D(14).

**Retention of Article 63B material: persons convicted of a recordable offence**

63F.—(1) Subject to paragraph (3), this Article applies to—

(a) Article 63B material which—

(i) relates to a person who is convicted of a recordable offence, and

(ii) was taken (or in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence, or

(b) material taken under Article 61(6) or 63(3B) which relates to a person who is convicted of a recordable offence.

(2) The material may be retained indefinitely.

(3) This Article does not apply to Article 63B material to which Article 63H applies.

**Retention of Article 63 B material: persons convicted of an offence outside Northern Ireland**

63G.—(1) This Article applies to material falling within paragraph (2) relating to a person who is convicted of an offence under the law of any country or territory outside Northern Ireland.

(2) Material falls within this paragraph if it is—

- (a) fingerprints taken from the person under Article 61(6D) (power to take fingerprints without consent in relation to offences outside Northern Ireland), or
- (b) a DNA profile derived from a DNA sample taken from the person under Article 62(2A) or 63(3D) (powers to take intimate and non-intimate samples in relation to offences outside Northern Ireland).

(3) The material may be retained indefinitely.

**Retention of Article 63B material: exception for persons under 18 convicted of first minor offence**

63H.—(1) This Article applies to Article 63B material which—

(a) relates to a person who—

- (i) is convicted of a recordable offence other than a qualifying offence,
- (ii) has not previously been convicted of a recordable offence, and
- (iii) is aged under 18 at the time of the offence, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) Where the person is given a custodial sentence of less than 5 years in respect of the offence, the material may be retained until the end of the period consisting of the term of the sentence plus 5 years.

(3) Where the person is given a custodial sentence of 5 years or more in respect of the offence, the material may be retained indefinitely.

(4) Where the person is given a sentence other than a custodial sentence in respect of the offence, the material may be retained until—

- (a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and
- (b) in the case of a DNA profile, the end of the period of 5 years beginning with—
  - (i) the date on which the DNA sample from which the profile was derived was taken, or
  - (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.

(5) But if, before the end of the period within which material may be retained by virtue of this Article, the person is again convicted of a recordable offence, the material may be retained indefinitely.

(6) In this Article “custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008; and for the purposes of paragraph (2) “the term of the sentence” is—

- (a) in the case of a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998, the period for which the person is detained under the order,

- (b) in the case of a custody care order under Article 44A of that Order, the period for which the person is kept in secure accommodation under the order.

**Retention of Article 63B material: persons given a penalty notice**

63HA.—(1) This Article applies to Article 63B material which—

- (a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) Act 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and
- (b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.

(2) The material may be retained—

- (a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,
- (b) in the case of a DNA profile, for a period of 2 years beginning with—
- (i) the date on which the DNA sample from which the profile was derived was taken, or
- (ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.

**Retention of Article 63B material given voluntarily**

63I.—(1) This Article applies to the following Article 63B material—

- (a) fingerprints taken with the consent of the person from whom they were taken, and
- (b) a DNA profile derived from a DNA sample taken with the consent of the person from whom the sample was taken.

(2) Material to which this Article applies may be retained until it has fulfilled the purpose for which it was taken or derived.

(3) Material to which this Article applies which relates to—

- (a) a person who is convicted of a recordable offence, or
- (b) a person who has previously been convicted of a recordable offence (other than a person who has only one exempt conviction),

may be retained indefinitely.

(4) For the purposes of paragraph (3)(b) a conviction is exempt if it is in respect of a recordable offence, other than a qualifying offence, committed when the person is aged under 18.

**Retention of Article 63B material with consent**

63J.—(1) This Article applies to the following material—

- (a) fingerprints (other than fingerprints taken under Article 61(6A)) to which Article 63B applies; and
- (b) a DNA profile to which Article 63B applies.

(2) If the person to whom the material relates consents to material to which this Article applies being retained, the material may be retained for as long as that person consents to it being retained.

(3) Consent given under this Article—

- (a) must be in writing; and

(b) can be withdrawn at any time.

**Article 63B material obtained for one purpose and used for another**

63K.—(1) Paragraph (2) applies if Article 63B material which is taken (or in the case of a DNA profile, derived from a sample taken) from a person in connection with the investigation of an offence leads to the person to whom the material relates being arrested for or charged with, or convicted of, an offence other than the offence under investigation.

(2) Articles 63C to 63J and Articles 63L and 63N have effect in relation to the material as if the material was taken (or, in the case of a DNA profile, was derived from a sample taken) in connection with the investigation of the offence in respect of which the person is arrested or charged.

**Destruction of copies**

63L.—(1) If fingerprints are required by Article 63B to be destroyed, any copies of the fingerprints held by the police must also be destroyed.

(2) If a DNA profile is required by that Article to be destroyed, no copy may be retained by the police except in a form which does not include information which identifies the person to whom the DNA profile relates.

**Destruction of samples**

63M.—(1) This Article applies to samples—

- (a) taken from a person under any power conferred by this Part, or
- (b) taken by the police, with the consent of the person from whom they were taken, in connection with the investigation of an offence by the police.

(2) A DNA sample to which this Article applies must be destroyed—

- (a) as soon as a DNA profile has been derived from the sample, or
- (b) if sooner, before the end of the period of 6 months beginning with the date on which the sample was taken.

(3) Any other sample to which this Article applies must be destroyed before the end of the period of 6 months beginning with the date on which it was taken.

(4) The Chief Constable may apply to a District Judge (Magistrates' Courts) for an order to retain a sample to which this Article applies beyond the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3) if—

- (a) the sample was taken from a person in connection with the investigation of a qualifying offence, and
- (b) the Chief Constable considers that the condition in paragraph (5) is met.

(5) The condition is that, having regard to the nature and complexity of other material that is evidence in relation to the offence, the sample is likely to be needed in any proceedings for the offence for the purposes of—

- (a) disclosure to, or use by, a defendant, or
- (b) responding to any challenge by a defendant in respect of the admissibility of material that is evidence on which the prosecution proposes to rely.

(6) An application under paragraph (4) must be made before the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3).

(7) If, on an application made by the Chief Constable under paragraph (4), the District Judge (Magistrates' Courts) is satisfied that the condition in paragraph (5) is met, the District Judge may make an order under this paragraph which—

- (a) allows the sample to be retained for a period of 12 months beginning with the date on which the sample would otherwise be required to be destroyed by virtue of paragraph (2) or (3), and
- (b) may be renewed (on one or more occasions) for a further period of not more than 12 months from the end of the period when the order would otherwise cease to have effect.

(8) An application for an order under paragraph (7) (other than an application for renewal)—

- (a) may be made without notice of the application having been given to the person from whom the sample was taken, and
- (b) may be heard and determined in private in the absence of that person.

(9) A sample retained by virtue of an order under paragraph (7) must not be used other than for the purposes of any proceedings for the offence in connection with which the sample was taken.

(10) A sample that ceases to be retained by virtue of an order under paragraph (7) must be destroyed.

(11) Nothing in this Article prevents a speculative search, in relation to samples to which this Article applies, from being carried out within such time as may reasonably be required for the search if the Chief Constable considers the search to be desirable.

**Use of retained material**

63N.—(1) Any material to which Article 63B or 63M applies must not be used other than—

- (a) for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or
- (b) for purposes related to the identification of a deceased person or of the person to whom the material relates.

(2) Material which is required by Article 63B or 63M to be destroyed must not at any time after it is required to be destroyed be used—

- (a) in evidence against the person to whom the material relates, or
- (b) for the purposes of the investigation of any offence.

(3) In this Article—

- (a) the reference to using material includes a reference to allowing any check to be made against it and to disclosing it to any person,
- (b) the reference to crime includes a reference to any conduct which—
  - (i) constitutes one or more criminal offences (whether under the law of Northern Ireland or of any country or territory outside Northern Ireland), or
  - (ii) is, or corresponds to, any conduct which, if it all took place in Northern Ireland, would constitute one or more criminal offences, and
- (c) the references to an investigation and to a prosecution include references, respectively, to any investigation outside Northern Ireland of any crime or suspected crime and to a prosecution brought in respect of any crime in a country or territory outside Northern Ireland.

**Exclusion for certain regimes**

63O.—(1) Articles 63B to 63N do not apply to material to which paragraphs 20A to 20J of Schedule 8 to the Terrorism Act 2000 (destruction, retention and use of material taken from terrorist suspects) apply.

(2) Any reference in those Articles to a person being arrested for, or charged with, an offence does not include a reference to a person—

- (a) being arrested under section 41 of that Act, or
- (b) being charged with an offence following an arrest under that section.

(3) Sections 63B to 63N do not apply to material to which paragraph 8 of Schedule 4 to the International Criminal Court Act 2001 (requirement to destroy material) applies.

(4) Sections 63B to 63N do not apply to material to which paragraph 6 of Schedule 6 to the Terrorism Prevention and Investigation Measures Act 2011 (requirement to destroy material) applies.

(5) Articles 63B to 63L and 63N do not apply to material which is, or may become, disclosable under—

- (a) the Criminal Procedure and Investigations Act 1996; or
- (b) a code of practice prepared under section 23 of that Act and in operation by virtue of an order under section 25 of that Act.

(6) Articles 63B to 63N do not apply to material which —

- (a) is taken from a person, but
- (b) relates to another person.

(7) Nothing in Articles 63B to 63N affects any power conferred by—

- (a) paragraph 18(2) of Schedule 2 to the Immigration Act 1971 (power to take reasonable steps to identify a person detained), or SCH. 2
- (b) section 20 of the Immigration and Asylum Act 1999 (disclosure information to the Secretary of State for use for immigration purposes).

**SCHEDULE 3**

**AMENDMENTS: FINGERPRINTS, DNA PROFILES, ETC. [S1B]**

*The Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)*

1.—(1) Article 53 (interpretation of Part 6) is amended as follows.

(2) In paragraph (1) at the appropriate places in alphabetical order insert—

““Article 63B material” means fingerprints or DNA profiles to which Article 63B applies;

“DNA profile” means any information derived from a DNA sample;

“DNA sample” means any material that has come from a human body and consists of or includes human cells;”.

(3) After paragraph (3) insert—

“(3A) In paragraph (3) the reference to the destruction of a sample does not include a reference to the destruction of a sample under Article 63M (requirement to destroy samples).

(3B) Any reference in Articles 63D, 63E, 63K or 63O to a person being charged with an offence includes a reference to a person being informed that the person will be reported for an offence.”.



2. In Article 53A(2) (list of “qualifying offences” for purposes of Part 6) in sub-paragraph (h) (offences under the Theft Act (Northern Ireland) 1969 for “section 9” substitute “section 8, 9”).

3. After Article 53A insert—

**“Persons convicted of an offence**

53B.—(1) For the purposes of this Part, any reference to a person who is convicted of an offence includes a reference to—

- (a) a person who has been given a caution in respect of the offence which, at the time of the caution, the person has admitted,
- (b) a person who has been found not guilty of the offence by reason of insanity, or
- (c) a person who has been found to be under a disability and to have done the act charged in respect of the offence

and, if Article 63H applies in relation to that person, that person shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.

(1A) Where—

(a) a discretionary youth conference under Part 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to a child and an offence; and

(b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, determines not to institute proceedings against the child in respect of the offence or, as the case may be, not to continue proceedings already instituted against the child in respect of the offence,

this Part applies, in relation to the child and the offence, as if the child had been convicted of the offence and, if Article 63H applies in relation to the child, the child shall be treated for the purposes of that Article as having been given a sentence other than a custodial sentence.

(2) This Part, so far as it relates to persons convicted of an offence, has effect despite anything in the Rehabilitation of Offenders (Northern Ireland) Order 1978.

(3) If a person is convicted of more than one offence arising out of a single course of action, those convictions are to be treated as a single conviction for the purposes of calculating under Articles 63D, 63E and 63I whether the person has been convicted of only one offence.

(4) See also Article 53(4) (which deals with findings equivalent to those mentioned in paragraph (1)(b) or (c) by courts which exercise jurisdiction under the laws of countries or territories outside Northern Ireland.”.

4. In Article 63 (non-intimate samples), in paragraph (3A)(c)(i) (as amended by section 8 of the Crime and Security Act 2010) for “64ZA” substitute “63M”.

5. In Article 89 (orders and regulations) after paragraph (2) insert—

“(2A) An order under Article 63DA(4) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

*The Counter-Terrorism Act 2008 (c.28)*

6. In section 18(8)(c) for “63A and 64” substitute “and 63A to 63P”.

*The Protection of Freedoms Act 2012 (c. 9)*

7.—(1) In Part 6 of Schedule 1 paragraph 7 is amended as follows.

**Deleted:** 5. In Article 89(2) (orders subject to negative resolution) after “60A” insert “, 63D(5)(c)”.  
*The Counter-Terrorism Act 2008 (c. 28)*  
 6. In section 18(8)(b)

- (2) In sub-paragraph (1) for “Article 64” (in both places) substitute “Article 63B”.
- (3) In sub-paragraph (2) for paragraphs (a) and (b) substitute “the material may be retained”.

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
www.dojni.gov.uk

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1933/2012

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Room 242, Parliament Buildings  
Ballymiscaw, Stormont  
Belfast BT4 3XX

30 November 2012

Dear Christine

**CRIMINAL JUSTICE BILL: MINISTERIAL AMENDMENTS TO THE SEX OFFENDER NOTIFICATION PROVISIONS**

At its meeting on 8 November, the Committee asked for sight of draft new clauses and amendments to the sex offender notification provisions that the Minister proposes to move at Consideration Stage. These are attached at Annex A.

Please note that all Ministerial amendments are subject to the agreement of Executive colleagues, which has not yet been obtained. The Attorney General's advice on compliance with the European Convention on Human Rights has been sought.

  
**BARBARA McATAMNEY**  
**DALO**

ENC

**Building a fair, just and safer community**

**ANNEX A**

Criminal Justice Bill  
Amendments to be move at Consideration Stage  
By the Minister of Justice

New Clause

After clause 1 insert—

**‘Notification requirements: absence from notified residence**

—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.

(2) After section 85 insert—

**‘Notification requirements: absence from notified residence**

85A.—(1) This section applies to a relevant offender at any time if the last home address notified by him under section 83(1), 84(1) or 85(1) was an address in Northern Ireland such as is mentioned in section 83(7)(a) (sole or main residence).

(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days (“the relevant period”), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is—

- (a) the date on which the relevant offender will leave that home address;
- (b) such details as the relevant offender holds about—
  - (i) his travel arrangements during the relevant period;
  - (ii) his accommodation arrangements during that period;
  - (iii) his date of return to that home address.

(4) In this section—

“travel arrangements” include, in particular, details of the means of transport to be used and the dates of travel,

“accommodation arrangements” include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

(5) Where—

- (a) a relevant offender has given a notification under subsection (2); and
- (b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete,

the relevant offender must give a further notification under subsection (2).

(6) Where a relevant offender—

- (a) has notified a date of return to his home address, but
- (b) returns to his home address on a date other than that notified,

the relevant offender must notify the date of his actual return to the police within 3 days of his actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 86.

(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

- (a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind mentioned in section 83(5)(g) notified to the police under section 83 or 85;
- (b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 84(1)(c).

(9) This section applies in relation to any relevant period which begins on or after the day after the coming into operation of section (*Notification requirements: absence from notified residence*) of the Criminal Justice Act (Northern Ireland) 2012.”.

(3) In section 87(1) and (4) (method of notification) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

(4) In section 91 (offences)—

- (a) in subsection (1)(a) after “85(1)” insert “, 85A(2) or (6)”;
- (b) in subsection (1)(b) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”;
- (c) in subsection (3) for “or 85(1)” substitute “, 85(1) or 85A(2) or (6)”.

Criminal Justice Bill  
Amendments to be moved at Consideration Stage  
By the Minister of Justice

**Clause 3**, page 2, line 31

Leave out 'an EEA State other than' and insert 'a country outside'

**Clause 3**, page 2, line 32

Leave out 'an EEA State other than' and insert 'a country outside'

**Clause 3**, page 2, line 35

Leave out 'an EEA State other than' and insert 'a country outside'

**Clause 3**, page 3, line 14

Leave out 'State' and insert 'country'

**Clause 3**, page 3, line 24

Leave out 'to the modifications set out below' and insert '—

- (a) in all cases, to the modifications set out below; and
- (b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 96B.'

**Clause 3**, page 4, line 18

Leave out 'State' and insert 'country'

**Clause 3**, page 4, line 24

Leave out 'an EEA State other than' and insert 'a country outside'

**Clause 3**, page 4, line 25 at end insert—

**'Offences committed in a country which is not a member of the Council of Europe**

96B.—(1) The further provisions referred to in section 96A(5)(b) are as follows.

(2) Where P is charged with an offence under section 97(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).

(3) P shall cease to be subject to the notification requirements of this Part by virtue of section 96A if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).

(4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied—

- (a) that any investigation or proceedings leading to it was conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the United Kingdom; and
- (b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 96A(2).

(5) In this section—

“the relevant conviction, finding or caution” means the conviction, finding or caution by reason of which P is subject, by virtue of section 96A, to the notification requirements of this Part;

“the relevant court” means—

- (a) in a case to which subsection (2) applies, the court before which P is charged;
- (b) in a case to which subsection (3) applies, the High Court.”.

**Clause 3**, page 4, line 26

Leave out from beginning to ‘section 97’ in line 29 and insert—

‘(3) Omit sections 97 to 101 (notification orders).

(4) Subsection (3) (and the related repeals in Part 1 of Schedule 4) do not affect the validity or effect of any order made under section 97 or 101’

**Clause 3**, page 4

Leave out line 33 and insert ‘for “98” substitute “96A(6)”.’

**Schedule 4**, page 24, line 17,

At end insert—

‘PART 1

SEX OFFENDERS

Short Title	Extent of repeal
The Sexual Offences Act 2003 (c. 42).	Sections 97 to 101. In section 136(8) “101”.

FROM THE OFFICE OF THE JUSTICE MINISTER



Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1972/2012

Ms Christine Darrah  
Clerk to the Committee for Justice  
Room 242 Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

06 December 2012

Dear Christine

**CRIMINAL JUSTICE BILL – DRAFT CLAUSES AMENDING DETENTION PROVISIONS**

I advised you in my letter dated 1 November that the Minister intended to include in the Bill an amendment to the Criminal Justice (Children)(Northern Ireland) Order 1998 to rectify a possible incompatibility with the European Convention on Human Rights (ECHR) concerning licence arrangements relating to the release of young offenders convicted of certain serious crimes. I now attach clauses that have been drafted for this purpose.

By way of background, I should explain that Article 45 detention orders are used infrequently for children convicted of very serious offences. The order is a 'whole term' disposal and, under existing legislation, matters relating to release on licence and recall to custody are determined by the Minister of Justice without reference to an independent judicial body or process. A legal challenge around an existing case has exposed the fact that the legislation is unlikely to be ECHR-compliant.



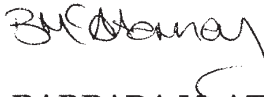
FROM THE OFFICE OF THE JUSTICE MINISTER



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www.dojni.gov.uk

Amended clauses (attached) have been drafted to remedy this by aligning the Article 45(2) provisions with those associated with other similar custodial orders which provide for release on licence and an independent judicial involvement. The sentencing judge will now fix a custodial period after which the Parole Commissioners will determine whether the detainee should be released on licence or recalled to custody if that is required. The principal test will be the protection of the public.

I should be grateful if the draft clauses could be tabled for consideration at the Committee's meeting on 6 December.



**BARBARA McATAMNEY**  
**DALO**

**ENC**

## **New Clause**

After Clause 7 insert—

### **‘Release on licence of child convicted of serious offence**

—(1) In Article 45(2) of the Criminal Justice (Northern Ireland) Order 1998 (child convicted of serious offence) for “notwithstanding any other provisions of this Order” substitute “subject to Articles 46 to 46B”.

(2) In Article 45 of that Order after paragraph (2) insert—

“(2A) Where a court passes a sentence under paragraph (2), the court shall specify such part of the sentence as the court considers appropriate as the relevant part of the sentence for the purposes of Article 46 (release on licence).”.

(3) For Article 46 of that Order substitute—

### **“Release on licence**

46.—(1) In this Article—

- (a) “P” means a person detained under Article 45(2);
- (b) “the Commissioners” means the Parole Commissioners for Northern Ireland;
- (c) “the Department” means the Department of Justice; and
- (d) references to the relevant part of P’s sentence are references to the part of P’s sentence specified as such under Article 45(2A).

(2) As soon as—

- (a) P has served the relevant part of P’s sentence; and
- (b) the Commissioners have directed P’s release under this Article,

the Department shall release P on licence.

(3) The Commissioners shall not give a direction under paragraph (2) with respect to P unless—

- (a) the Department has referred P’s case to the Commissioners; and
- (b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(4) P may require the Department to refer P’s case to the Commissioners at any time—

- (a) after P has served the relevant part of P’s sentence; and
- (b) where there has been a previous reference of P’s case to the Commissioners under paragraph (3) or Article 46B(4), after the end of the period of 12 months beginning with the disposal of that reference.

(5) In determining for the purpose of this Article whether P has served the relevant part of P's sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Department otherwise directs.

(6) The Department may at any time release P on licence if it is satisfied that exceptional circumstances exist which justify P's release on compassionate grounds.

(7) Before releasing P under paragraph (6), the Department shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.

(8) Nothing in this Article requires the Department to release a person in respect of a sentence under Article 45(2) at any time when that person is liable to be detained in respect of any other sentence.

#### **Duration and conditions of licences under Article 46**

46A.—(1) Where a person is released on licence under Article 46, the licence shall, unless previously revoked under Article 46B, remain in force until the expiry of the period for which the person was sentenced to be detained.

(2) A person released on licence under Article 46 shall comply with such conditions as may for the time being be specified in the licence (which may include on release conditions as to supervision by a probation officer).

(3) The Department of Justice shall not, except in accordance with recommendations of the Parole Commissioners for Northern Ireland—

- (a) include a condition in a licence on release,
- (b) subsequently insert a condition in a licence, or
- (c) vary or cancel any condition in a licence.

#### **Recall of licensees**

**46B.**—(1) In this Article —

“P” means a person who has been released on licence under Article 46;

“the Commissioners” and “the Department” have the meanings given in Article 46(1).

(2) The Department may revoke P's licence and recall P to detention—

- (a) if recommended to do so by the Commissioners, or
- (b) without such a recommendation, if it appears to the Department that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

- (a) shall, on P's return to detention, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and

(b) may make representations in writing to the Department with respect to the recall.

(4) The Department shall refer P's case to the Commissioners.

(5) Where on a reference under paragraph (4) the Commissioners direct P's immediate release on licence under Article 46, the Department shall give effect to the direction.

(6) The Commissioners shall not give a direction under paragraph (5) unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be confined.

(7) On the revocation of P's licence, P shall be liable to be detained in pursuance of P's sentence and, if at large, shall be treated as being unlawfully at large."

(5) In Article 46(3) of the Criminal Justice (Northern Ireland) Order 2008 (functions of Parole Commissioners for Northern Ireland) at the end add "or Articles 46 to 46B of the Criminal Justice (Children) (Northern Ireland) Order 2008."

(6) Where—

(a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order; and

(b) the Department, after consultation with the Lord Chief Justice and the trial judge if available, certifies its opinion that, if the amendments made by this section had been in operation at the time when that person was sentenced, the court by which that person was sentenced would have specified as the relevant part of the sentence such part as is specified in the certificate,

Article 46 of the 1998 Order (as substituted) shall apply as if the relevant part of that person's sentence for the purposes of that Article were the part specified in the certificate.

(7) But subsection (6) does not apply (and subsection (8) applies instead) where that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.

(8) Where this subsection applies, paragraphs (3) to (6) of Article 46B of the 1998 Order have effect as if that person had been recalled to prison under paragraph (2) of that Article on commencement.

(9) Articles 46A and 46B of the 1998 Order apply to an existing licensee as they apply to a person who is released on licence under Article 46 of that Order (as substituted).

(10) In this section—

"commencement" means the date on which this section comes into operation;

"existing licensee" means a person who, before commencement, has been discharged on licence under Article 46 of the 1998 Order and whose licence is in force on commencement;

"the 1998 Order" means the Criminal Justice (Children) (Northern Ireland) Order 1998.'

**Clause 9, page 8, line 2**

After 'sections 2' insert '*(Release on licence of child convicted of serious offence)*'

**Long title**

At end insert 'and to provide for the release on licence of persons detained under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998'

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**  
[www.dojni.gov.uk](http://www.dojni.gov.uk)

Minister's Office Block B,  
Castle Buildings  
Stormont Estate  
Ballymiscaw  
Belfast  
BT4 3SG  
Tel: 028 90529272  
[private.office@dojni.x.gsi.gov.uk](mailto:private.office@dojni.x.gsi.gov.uk)

Our ref SUB/1978/2012

Ms Christine Darrah  
Committee Clerk  
Committee for Justice  
Northern Ireland Assembly  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast BT4 3XX

December 2012

Dear Christine,

**CRIMINAL JUSTICE BILL: HUMAN TRAFFICKING AMENDMENTS**

The Minister of Justice has written to the Attorney General seeking confirmation that amendments on human trafficking, which he intends to bring forward at Consideration Stage of the Criminal Justice Bill, are compliant with the European Convention on Human Rights. He will also need to put the changes to the Executive. This letter provides an update.

As the Committee is aware from my letter of 1 November 2012, the Minister asked officials to undertake work on whether human trafficking offences should be triable on indictment only, rather than triable either way (which is the present position). Currently a case may be tried in the Magistrates' Courts where the maximum term of imprisonment is 6 months, or the Crown Court where the maximum term of imprisonment is, generally, 14 years (Trafficking for sexual exploitation can attract either an indeterminate or extended custodial sentence under provisions in the Criminal Justice (NI) Order 2008). Making trafficking offences triable in the Crown Court only would address the strong views we picked up from the Justice

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Committee and others, including Non-Governmental Organisations (NGOs), that human trafficking is a serious offence which should be treated accordingly.

The Department has consulted a number of organisations and stakeholders about this proposal including the PSNI, Public Prosecution Service (PPS), the Organised Crime Task Force Immigration and Human Trafficking Subgroup and the judiciary. The Lord Chief Justice, Recorder, deputy Recorder and Presiding District Judge (Magistrates' Court) have no objection. The PPS is content with the proposal and has advised that it is unlikely to impact on the Crown Court system. Of the cases referred to the PPS (approximately 18 since 2007), the two cases prosecuted to date in Northern Ireland were tried in the Crown Court. This mirrors the position in England and Wales where the Crown Prosecution Service (CPS) has confirmed that it has never prosecuted a human trafficking offence in the Magistrates' Court.

The Minister has considered the views of the Committee and others and has concluded that human trafficking cases should be removed from the Magistrates' Courts. He believes that the change should send out a strong message that Northern Ireland is a hostile place for traffickers.

Amending the provisions in this way would mean that sentences for human trafficking would automatically be included in those offences referable to the Court of Appeal by the Director of Public Prosecutions on the grounds that he believes the sentence is unduly lenient, an amendment that we planned to make separately.

### **The Serious Crime Act 2007 – consequential amendment**

The second amendment concerns the matter of serious crime prevention orders (SCPOs) under section 1 of the Serious Crime Act 2007 (the 2007 Act). The SCPO was introduced as a new kind of civil injunctive order which is aimed at preventing serious crime. Section 1(2) of the 2007 Act empowers the High Court in Northern Ireland to make a SCPO if two conditions are satisfied. First, it is satisfied that a person has been involved in serious crime (whether in Northern Ireland or

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elsewhere); and second, it has reasonable grounds to believe that the order would protect the public by preventing, restricting or disrupting involvement by the person in serious crime in Northern Ireland.

Serious crime committed elsewhere than in Northern Ireland is also covered by the 2007 Act.

Part 2 of Schedule 1 to the 2007 Act contains a non-exhaustive list of specified serious offences. Paragraph 18 of Part 2 is entitled "*People Trafficking*" and includes the existing offences. An amendment to Part 2 of Schedule 1 is required to include in it the new human trafficking offences being created by the Criminal Justice Bill. A similar amendment is being introduced in England and Wales to reflect the changes made by the Protection of Freedoms Act 2012.

### **Conclusion**

The Committee is asked to note these proposals. A copy of this letter is being sent to Anna Lo, the chairperson of the All Party Group on Human Trafficking.

**BARBARA McATAMNEY**  
**DALO**





Northern Ireland  
Assembly

Appendix 6

# Additional Papers Considered by the Committee





Mr Paul Givan MLA  
Chairman  
Committee for Justice  
Room 242  
Parliament Buildings  
Ballymiscaw  
Stormont  
Belfast  
BT4 3XX

Our Ref: 18/05/11/021

Date: December 4 2012

*Dev Chairman*

**Proposed Amendment to Abolish the Offence of Scandalising the Court**

Thank you for your letter inviting my comments on your proposed amendment to the Criminal Justice Bill. I assume you are aware that the Law Commission in England have recently completed a consultation exercise on this aspect of the law of contempt. I understand that they will be reporting their conclusions shortly.

**The need for the protection afforded by the existence of this offence**

As we have discussed with the Committee previously, my concern is with the protection of public confidence in the administration of justice. Confidence in the administration of justice once lost, however unjustifiably, might not be easily restored. Public confidence in the administration of justice is the birthright of all of our citizens and should not be improperly imperilled.

Public confidence in the administration of justice, for example, in impartiality of judges is far too important to be left to the personal inclination of an individual judge to seek a private law remedy. A judge might decide to issue proceedings for a very public and damaging libel only to settle such proceedings confidentially. Such an outcome might satisfy the needs of the individual judge but would be unlikely to repair any impairment of public confidence that had occurred as a result of the libel.

Judges may also not wish for a variety of resource and personal reasons to hazard their personal reputations in litigation and it might be thought that there were reputational risks if judges were seen to frequently resort to private law proceedings for libel.

### **Making statutory provision for the offence in a modified form**

If there is something amiss with the administration of justice it cannot be wrong to point this out. There is nothing at all improper about well-informed and robust criticism of the administration of justice. On the other hand, endangering public confidence unjustifiably in the administration of justice causes the kind of social harm for which a public law remedy ought to exist.

In my view, the law of ‘scandalising contempt’ in its present form is neither particularly accessible nor widely understood. Indeed, despite recent publicity arising from the Peter Hain case, there might still be uncertainty about the nature of criticism that the law undoubtedly permits. Common law offences are inherited and develop over time. Statutory provision in this area would remove any current uncertainties and promote public awareness of rights and responsibilities in relation to criticism of judges. I would imagine that a modern name for this type of contempt, such as ‘undermining public confidence in the administration of justice’ would assist.

In terms of the specifics of the offence, the current common law offence implicitly provides for the defence of truth, indeed, this is clearly required as a condition of compliance with Article 10 ECHR. Statutory provision could not only make this explicit but could, in addition, provide for a defence of honest and reasonable belief.

There is also at present a little uncertainty about the *actus reus* ( the conduct element of the offence). A new statute based provision should require conscious publication, with ulterior recklessness as to its impact on the administration of justice.

I would also suggest specification of a proportionate maximum penalty for this type of contempt. This should probably be identical to the maximum available under the Contempt of Court Act 1981.

The Law Commission’s recent consultation paper concludes that it is unlikely that the European Court of Human Rights would find the existence of the offence of scandalising incompatible with the ECHR. I agree with this analysis. Recent support for it can be found in the ECtHR decision in *Falter Zeitschriften v Austria (No.2)* [2012]<sup>1</sup>.

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<sup>1</sup> *Application no. 3084/07*

The European Court of Human Rights restated the interplay between freedom of expression (article 10) and protection of the administration of justice. Amongst other points made, it was reaffirmed that:

Protection of public confidence in the judiciary is a legitimate aim of legislation and such measures will not automatically trigger a violation of article 10.

The safeguard afforded by article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith and on an accurate factual basis.


The judiciary must enjoy public confidence and protection against destructive, unfounded attacks may therefore be necessary, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying.

National authorities enjoy a certain margin of appreciation in determining the existence and extent of the necessity of an interference with the freedom of expression.

### **Conclusion**

In my view, the present Criminal Justice Bill may provide an opportunity to recast scandalising contempt in statutory form. It would be unduly optimistic to assume that public confidence in the administration of justice can easily survive the absence of the protections it currently possesses.

I am very happy to discuss this further should you think this would be helpful.

*Yours sincerely,*  


John F Larkin QC  
Attorney General for Northern Ireland





Northern Ireland  
Assembly

Appendix 7

# List of Witnesses





## List of Witnesses

<b>CARE in Northern Ireland</b>	Mark Baillie	Public Affairs Officer
	Dr Dan Boucher	Director of Parliamentary Affairs
<b>Children’s Law Centre</b>	Paddy Kelly	Director
	John Patrick Clayton	Assistant Policy Officer
<b>Department of Justice</b>	Gary Dodds	Police Powers and Custody Branch
	Dawn Harmon	Community Safety Unit
	David Hughes	Deputy Director, Policing Policy and Strategy Division
	Gareth Johnston	Deputy Director, Criminal Justice Policy and Legislation Division
	Ian Kerr	Police Powers and Custody Branch
	Amanda Patterson	Criminal Justice Policy and Legislation Division
	Debbie Pritchard	Human Trafficking Branch
	Simon Rogers	Deputy Director, Protection and Organised Crime Division
<b>Northern Ireland Commissioner for Children and Young People</b>	Patricia Lewsley-Mooney	Commissioner
	Colette McIlvanna	Senior Legal and Casework Officer
<b>Northern Ireland Council for Ethnic Minorities</b>	Helena Macormac	Strategic Advocacy Project Manager
	Karen McLaughlin	Legal Policy Officer
<b>Northern Ireland Human Rights Commission</b>	Michael O’Flaherty	Chief Commissioner
	Colin Caughey	Policy Worker
<b>Police Service of Northern Ireland</b>	Assistant Chief Constable George Hamilton	
	Chief Superintendent Ivan Farr	Head of Scientific Support
	Chief Superintendent Mark Hamilton	
	Detective Superintendent Phil Marshall	Chair of the Immigration and Human Trafficking Subgroup
<b>UK Border Agency</b>	Mike Golden	







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