

# **JUSTICE BILL**

---

## **EXPLANATORY AND FINANCIAL MEMORANDUM**

### **INTRODUCTION**

1. This Explanatory and Financial Memorandum has been prepared by the Department of Justice to assist readers of the Bill and to help inform debate. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. Where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Bill gives effect to the desire of the Justice Minister to improve the operation of the justice system. At its core are three aims: to improve services for victims and witnesses; to speed up the justice system; and to improve the efficiency and effectiveness of key aspects of the system. In practice, there is considerable convergence between a number of these measures and the proposed provisions will often advance more than one of the core aims.
4. Services and facilities for victims and witnesses will be improved by creating new statutory Victim and Witness Charters; the introduction of a legal entitlement to be afforded the opportunity to make a victim statement (to be known as a victim personal statement); information disclosure provisions between criminal justice system service providers; and proposals for video link powers being expanded between courts and a number of new locations.
5. The Bill will tackle delay and speed up the justice system. Prosecutorial Fines will be introduced to reduce the number of cases going unnecessarily to court. New arrangements to encourage earlier guilty pleas will be introduced and judges will be given new case management powers and responsibilities. Committal proceedings will be streamlined and prosecutors will be given the ability to issue summonses directly.

6. The Bill will also introduce a series of standalone reforms to improve the effectiveness, efficiency and fairness of the system. This includes modernisations of the criminal history disclosure service; the introduction of a single territorial jurisdiction for the county courts and magistrates' courts; the expansion of eligibility for jury service; and the creation of new civil orders to manage the risks posed by violent offenders.

## **CONSULTATION**

7. All of the major components proposed for inclusion in the Bill have been the subject of consultation exercises, and associated policy screening exercises, that concluded with the Justice Committee have receiving presentations on summaries of responses and ways forward. A number of technical changes were subject to a more targeted consultation.
8. Full consultation exercises were completed on proposals relating to committal reform; encouraging earlier guilty pleas; the introduction of a statutory framework for the management of criminal cases; the introduction of Victim and Witness Charters; the provision of victim personal statements; reform of the criminal record regime; expanding live video link opportunities in courts; the introduction of Violent Offences Prevention Orders; and changes to the upper age limits for juries.
9. A discrete number of the Bill's proposals were consulted upon previously in anticipation of inclusion in a prior Justice Bill. Drafting resources and prioritisation of content dictated that these proposals had to be removed to await inclusion in the next appropriate piece of criminal justice legislation. Tying into the themed approach of a faster, fairer and more effective justice system, previously consulted upon proposals for the creation of a single jurisdiction for the county courts and magistrates' courts; powers for the PPS to issue summonses; and the creation of prosecutorial fines are re-presented in this Bill.
10. Finally, a very small number of matters in the Bill have been subject to targeted consultation. This is in recognition of the largely technical nature of these adjustments and the importance of targeting key stakeholders. Proposals within this category include amendments to update the Juries (NI) Order 1996 and creating a power of inspection of property in criminal cases.
11. In addition to the individual policy consultation exercises that were carried out, a consultation exercise was also completed to seek views on the equality aspects and assessments carried out on the measures to be contained the Bill.

12. Consultation did not take place on the provisions to increase the powers of court security officers as this is a technical measure correcting a lacuna in the current law.
13. In overall terms respondents have generally been positive about the proposals across all of the consultations and where adjustments were required, they have been made (see Options Considered).
14. The various consultation documents and summaries of responses on all of the closed consultations can be accessed separately at [www.dojni.gov.uk](http://www.dojni.gov.uk) or at [www.courtsni.gov.uk](http://www.courtsni.gov.uk) or individually as now listed.

### **Single Jurisdiction for County Courts and Magistrates' Courts**

Consultation document: [http://www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/Documents/Redrawing%20the%20Map%20%e2%80%93%20A%20Consultation%20on%20Court%20Boundaries%20in%20Northern%20Ireland/p\\_pc\\_Redrawing-the-map\\_Consultation-Paper.pdf](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Redrawing%20the%20Map%20%e2%80%93%20A%20Consultation%20on%20Court%20Boundaries%20in%20Northern%20Ireland/p_pc_Redrawing-the-map_Consultation-Paper.pdf)

Summary of Responses: [http://www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/Documents/Redrawing%20the%20map%20%e2%80%93%20a%20consultation%20on%20court%20boundaries%20in%20Northern%20Ireland.%20Summary%20of%20responses%20and%20proposed%20way%20forward/p\\_pc\\_RedrawingMap\\_ReportOnConsultation.pdf](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Redrawing%20the%20map%20%e2%80%93%20a%20consultation%20on%20court%20boundaries%20in%20Northern%20Ireland.%20Summary%20of%20responses%20and%20proposed%20way%20forward/p_pc_RedrawingMap_ReportOnConsultation.pdf)

### **Committal for Trial**

Consultation document: [http://www.dojni.gov.uk/index/public-consultations/archive-consultations/speeding\\_up\\_justice\\_consultation\\_on\\_reform\\_of\\_committal\\_proceedings.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/speeding_up_justice_consultation_on_reform_of_committal_proceedings.pdf)

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/early-guilty-pleas-and-committal-reform-report-on-responses-and-way-forward-report.pdf>

## **Prosecutorial Fines**

Consultation document:

[http://webarchive.nationalarchives.gov.uk/20091013044625/http://www.nio.gov.uk/alternatives\\_to\\_prosecution\\_-\\_a\\_discussion\\_paper.pdf](http://webarchive.nationalarchives.gov.uk/20091013044625/http://www.nio.gov.uk/alternatives_to_prosecution_-_a_discussion_paper.pdf)

Summary of Responses:

[http://webarchive.nationalarchives.gov.uk/20101015090744/http://www.nio.gov.uk/alternatives\\_to\\_prosecution\\_consultation\\_-\\_summary\\_of\\_responses\\_october\\_2009.pdf](http://webarchive.nationalarchives.gov.uk/20101015090744/http://www.nio.gov.uk/alternatives_to_prosecution_consultation_-_summary_of_responses_october_2009.pdf)

## **Victims and Witnesses**

The Victim Charter and the Witness Charter

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-document-making-a-difference-improving-access-to-justice-for-victims-and-witnesses-of-crime-a-five-year-strategy-2.pdf>

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-of-responses-to-consultation-making-a-difference-improving-access-to-justice-for-victims-and-witnesses-of-crime.pdf>

Victim Statements

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/provison-of-impact-statements-reports.pdf>

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-of-responses-to-consultation-on-vis-and-vir.pdf>

## **Criminal Records**

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-paper-for-review-of-criminal-records-check.pdf>

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-of-responses-and-way-forwardcrnrip1.pdf>

### **Live Links in Criminal Proceedings**

Consultation documents: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-proposals-to-extend-use-of-live-links-in-court.pdf>

And:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/live-links-and-weekend-courts-consultation-20130221.pdf>

Summaries of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/live-links-consultation-summary-of-responses-final-report.pdf>

And:

<http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-proposals-for-live-links-in-weekend-courts-summary-of-responses-and-way-forward.pdf>

### **Violent Offences Prevention Orders**

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-proposals-for-legislation-on-sex-offender-notification-and-violent-offender-orders.pdf>

Summary of Responses: [http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary\\_of\\_responses\\_to\\_consultation\\_on\\_sex\\_offender\\_notification\\_and\\_violent\\_offender\\_orders.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary_of_responses_to_consultation_on_sex_offender_notification_and_violent_offender_orders.pdf)

### **Miscellaneous**

#### Jury Service

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/upper-age-limit.pdf>

Summary of Responses and Consultation Report: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/upper-age-limit-jury-service-consultation-report.pdf>

### Avoiding delay in criminal proceedings

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/managing-criminal-cases.pdf>

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/managing-criminal-cases-report-on-responses.pdf>

### Early Guilty Pleas

Consultation paper: [http://www.dojni.gov.uk/index/public-consultations/archive-consultations/speeding\\_up\\_justice\\_consultation\\_paper\\_on\\_egp.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/speeding_up_justice_consultation_paper_on_egp.pdf)

Summary of responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/early-guilty-pleas-and-committal-reform-report-on-responses-and-way-forward-report.pdf>

### Public Prosecutor's Summons

Consultation document: [http://www.courtsni.gov.uk/en-GB/Publications/Public\\_Consultation/Documents/Provision%20to%20allow%20the%20Public%20Prosecution%20Service%20to%20commence%20proceedings%20without%20recourse%20to%20a%20lay%20magistrate/p\\_pc\\_Proposal-to-allow-the-Public-Prosecution-Service-to-issue-summonses.pdf](http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Documents/Provision%20to%20allow%20the%20Public%20Prosecution%20Service%20to%20commence%20proceedings%20without%20recourse%20to%20a%20lay%20magistrate/p_pc_Proposal-to-allow-the-Public-Prosecution-Service-to-issue-summonses.pdf)

Summary of Responses:

[http://www.courtsni.gov.uk/enGB/Publications/Public\\_Consultation/Documents/Consultation%20on%20proposal%20to%20allow%20the%20Public%20Prosecution%20Service%20to%20issue%20summonses%20%20Summary%20of%20responses%20and%20way%20forward/p\\_pc\\_PPSSummonses\\_ReportOnConsultation.pdf](http://www.courtsni.gov.uk/enGB/Publications/Public_Consultation/Documents/Consultation%20on%20proposal%20to%20allow%20the%20Public%20Prosecution%20Service%20to%20issue%20summonses%20%20Summary%20of%20responses%20and%20way%20forward/p_pc_PPSSummonses_ReportOnConsultation.pdf)

### Youth Justice

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-the-report-of-the-review-of-youth-justice-nov11.doc>

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/youth-justice-review-consultation-summary-of-recommendations.pdf>

## **Equality**

Consultation document: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/equality-consultation-document-for-a-proposed-justice-bill-northern-ireland-2013.pdf>

Summary of Responses: <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/final-version-report-on-equality-consultation-on-the-content-of-the-proposed-justice-bill-northern-ireland-2013.pdf>

## **OPTIONS CONSIDERED**

15. As detailed below, many of the provisions in the Bill were developed following comprehensive options appraisals.

### **Single Jurisdiction**

16. Two options were consulted upon –

17. **Option (i)** - Re-align court boundaries taking the Review of Public Administration (RPA) into account.

This would have been the more conventional approach, retaining the link between statutory court boundaries and local government boundaries.

18. **Option (ii)** - Create a single territorial jurisdiction.

This was the more radical option, removing existing statutory court boundaries for county courts and the magistrates' courts, thereby introducing greater flexibility in arrangements for the distribution of court business, and allowing modernisation and streamlining of many administrative processes.

19. **Outcome of consultation** - The majority of respondents supported the single jurisdiction option and this is the basis for our legislative provision.

### **Committal for Trial**

20. The consultation paper sought views on the following proposals:
- (i) the abolition of the taking of oral evidence from a witness at committal proceedings (though the defendant would still be entitled to make representations on their own behalf;
  - (ii) extending this reform to include cases brought under the Justice and Security (Northern Ireland) Act 2007 and to extra-territorial offences.
21. In addition, the paper sought views on the scope for more fundamental reform – including enabling the direct transfer of cases to the Crown Court in certain circumstances.
22. **Outcome of consultation** – The majority of consultees supported the proposals so the above matters all form the basis of our legislative proposals.

### **Victims and Witnesses**

23. **Victim Charter and Witness Charter** - consultation was undertaken on a draft five year strategy, the key elements of which focused on five themes.
24. Theme 1: Status and treatment of victims and witnesses – This aims to make clearer the entitlements of victims and the standard of services that victims and witnesses can expect to receive as they move through the criminal justice system. The main elements of this relate to statutory Victim and Witness Charters and a statutory entitlement relating to making a victim personal statement.
25. Theme 2: Communication and providing information – This deals with measures to improve communication across the criminal justice system and with victims and witnesses of crime. It includes setting up a victim and witness care unit and preparing an easy-to-understand flowchart of the various stages that a case may go through.
26. Theme 3: Providing support and special measures - This deals with support facilities, with a focus on individual needs, and assessing these early on. Work in this area includes introducing a formal needs assessment process, developing advocacy services, establishing registered intermediaries schemes, exploring the scope for improve information sharing and working to reduce waiting times at court.



27. Theme 4: Involvement and improved understanding – This focuses on providing a legal entitlement for victims relating to making a written victim personal statement, as well as promoting guidance on it, expert victim impact reports and community impact statements. It also deals with continuing to develop and update guidance documents on the criminal justice system.
28. Theme 5: Gathering information and research on the experiences of victims and witnesses – This theme tackles the need for further research in relation to the experiences of victims of more serious crime, to help develop policy and services in this area
29. **Outcome of consultation** - There was support for the new five year victim and witness strategy and the introduction of Victim and Witness Charters
30. **Victim Personal Statements** - the consultation paper sought views on alternative options for how the victim personal statement should operate as opposed to different options for how the view of a victim could be presented. Views were sought on:
  - (i) whether the victim personal statement should be placed on a legislative or non-legislative basis;
  - (ii) whether guidance on the victim personal statement should be prepared;
  - (iii) whether there should be restrictions on the use of the statement, in terms of the disclosure of its content in court;
  - (iv) whether the statement should be limited to specific offences, for example more serious offences;
  - (v) whether the statement should be disclosed to other criminal justice organisations, in order to improve service provision and advise victims of other relevant available services;
  - (vi) the stage in the criminal justice process at which the statement should be used, for example whether it should be available at the decision to prosecute stage, at the bail stage or at the point at which a person is convicted;
  - (vii) whether the statement could be read out in court by the victim.

31. **Outcome of consultation** - the consultation responses showed support for the introduction of the victim personal statement on a legislative basis and for the introduction of guidance. There was also support for greater sharing of the information in the victim personal statement and that there should not be restrictions on its use, in terms of disclosure of its content in court. Consultees were also of the view that the statement should not be limited to more serious offences and supported the statement being read out in court, though the latter has not been provided for, given concerns about the potential impact on victims.

### **Criminal Records**

32. The consultation sought views on a number of the recommendations made by Sunita Mason, the Independent Advisor for Criminality Information Management for England and Wales, in her report on Part One of her review of the criminal records regime in Northern Ireland, which was published in August 2011. The report is available at [www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-of-responses-and-way-forwardcrrnpi1.pdf](http://www.dojni.gov.uk/index/public-consultations/archive-consultations/summary-of-responses-and-way-forwardcrrnpi1.pdf)
33. Mrs Mason recommended that there should be a dedicated representations process that would be open and transparent to deal with cases where applicants wish to dispute police information or criminal conviction information disclosure. Views were sought on the four options set out in her report. These were–
- i) To ask a different PSNI officer to review the information that has been the subject of the complaint;
  - ii) To invite a chief officer in another police force to review the information;
  - iii) To set up a body (it could be an individual on a part-time basis) to look specifically at complaints;
  - iv) To use the appointed Independent Monitor of police disclosure information to undertake this work.
34. **Outcome of consultation** - the consultation was welcomed by respondents. Broadly, they agreed either fully or in principle with the majority of the recommendations and proposals set out in the consultation document.

35. In relation to the recommendation about an independent representations process, twelve respondents agreed; three agreed in principle and none disagreed. There were mixed views on what the appeals process should be with some respondents favouring the options of a different police officer, or setting up reciprocal arrangements with another police force, to review the information. Others queried the independence of such arrangements and supported the establishment of a separate, independent appeals process or extending the role of the Independent Monitor for the Disclosure and Barring Service to take on this work.
36. A similar recommendation was made in Mrs Mason's review of the criminal records regime in England and Wales and it was agreed that the role of the Independent Monitor (IM) there should be extended to provide an appeal mechanism. It was considered that this change in functions would also provide a useful model for Northern Ireland, would provide consistency on the release of information across police forces and, unlike setting up a dedicated representations process for Northern Ireland, would not lead to significant costs.

### **Live Links in Criminal Proceedings**

37. It was originally proposed to extend the use of live links in six areas:
- (i) Expert witnesses;
  - (ii) Witness from outside the UK;
  - (iii) Committal proceedings;
  - (iv) Parole Commissioners' Oral Hearings;
  - (v) Breach Proceedings; and
  - (vi) Part 2 patients in Psychiatric Hospitals.
38. For Live Links in Weekend Courts we originally proposed that live links could be from courts or police stations for first remand hearings.

39. The **outcome of the consultation** was that the Department would prepare legislation for live links to be extended in the areas outlined above. All of these proposals would be introduced through the ‘Faster, Fairer’ Justice Bill, apart from the extension of live links to include Parole Commissioners’ Oral Hearings, which will be introduced through Parole Commissioners’ Rules.
40. For Live Links in Weekend Courts the outcome was that the Department would prepare legislation for live links in magistrates’ courts at weekends and public holidays, only between courtrooms, for certain hearings, including where the defendant or offender is appearing before the court for the first time following arrest or charge.

#### **Violent Offences Prevention Orders**

41. Prior to public consultation on the Violent Offences Prevention Order (VOPO) - originally referred to as the Violent Offender Order – (VOO), key policy issues on the workability of the order were initially discussed with those partner agencies who would be responsible for the operational delivery of the new order: primarily the Probation Board for Northern Ireland (PBNI); and the Police Service of Northern Ireland (PSNI).
42. Specifically, the Department sought views on the need for the order – in ensuring better management of risk from those convicted of violent offences who were also considered by the court to pose a risk of serious violent harm. The aim being to enhance public protection and decrease the likelihood of serious re-offending. Views were also sought on the scope of the order (criteria; effect; and procedure), should it be introduced. Views obtained from this pre-policy exercise proved invaluable to the main consultation exercise, as it helped ensure that workable outline proposals were available for use in public consultation discussions.
43. Partner agencies expressed a strong desire for the VOPO to be introduced to Northern Ireland and were keen that this was achieved as soon as possible.

#### **Options considered:**

44. As with the pre-policy exercise, the two main areas explored during consultation were: the need for a VOPO in Northern Ireland; and how the order might be tailored to suit the Northern Ireland context.

45. **Option 1** - VOPO need: The consultation highlighted concerns, raised during the pre-policy consultation exercise, on the current ability to engage with risk posed by violent offenders, particularly those who would no longer be subject to conditions of release, either as a result of a supervised licence, or under probation supervision, as part of a court order.
46. The consultation highlighted the view expressed by key criminal justice agencies that there was a perceived gap in the provision for applying the public protection arrangements in an effective way to violent offenders, as compared with sex offenders. This was due to the availability of the Sexual Offences Prevention Order (SOPO), which was considered a valuable tool in the risk management of sex offenders.
47. **Option 2** - VOPO model – England and Wales: the consultation set out the specific legislative criteria of the VOO model operating in England and Wales. (No such order exists in either Scotland or the Republic of Ireland). It sought views on how a Northern Ireland model might be developed across three main areas:
- (i) Order Criteria
- the age of a qualifying offender; and
  - its specified offences.
- (ii) Effect of the Order:
- its conditions;
  - the duration of an order;
  - notification requirements; and
  - sanctions for breach.
- (iii) Procedural issues:
- how a VOPO would be applied; and
  - when it should come into force.

48. **Outcome of consultation** - respondents to the consultation (pre-policy and public) were supportive of the introduction of a VOPO to Northern Ireland, and were keen that the VOPO would be made more similar in its framework and operation to the existing SOPO.
49. A number of key changes to the England and Wales VOO model were identified, and considered necessary to the operation of the order in Northern Ireland in the following areas:
- i) order criteria – the criteria of the England and Wales model was considered too restrictive, and there was the view that the Northern Ireland order should be based on the offence committed and not the length of sentence;
  - ii) application stage – it was considered that an order should be available to be made on conviction as well as on application by the police at a later stage, and that it should be available to operate alongside any statutory licence conditions, where necessary, in line with SOPO provision;
  - iii) duration of the order – a minimum and maximum term should be further considered; and
  - iv) applicable conditions – it was considered that positive requirements, as well as prohibitions, should also form part of the conditions of an order, in line with new legislative changes being made to the SOPO.
50. A dedicated working group, led by the Department and comprising representation of the key criminal justice agencies, was established following consultation, to consider responses, and to further shape development of policy and legislative proposals.

### **Jury Service**

51. The consultation asked:
- i) Should there be an upper age limit?
  - ii) If so, at what age should it be set?
  - iii) Should there be a right to excusal?
52. Various rationales for setting the age at which there should either be a limit or a right to excusal were suggested:

- i) Healthy life expectancy (80)
  - ii) Disability-free life expectancy (75)
  - iii) Likely age at which 100% discretionary excusal would be reached (80)
  - iv) State retirement age (62 for women and 65 for men at the time the consultation document was published)
  - v) Actual average retirement age (62 for women; 65 for men)
  - vi) Judicial retirement age (70)
  - vii) Status quo (70)
53. For the purposes of a regulatory impact assessment, the following seven options were considered:
- i) No change
  - ii) Age limit of 75 and right to excusal
  - iii) Age limit of 75 and no right to excusal
  - iv) Age limit of 80 and right to excusal
  - v) Age limit of 80 and no right to excusal
  - vi) No age limit and right to excusal
  - vii) No age limit and no right to excusal
54. **Outcome of consultation** - there was clear support for the proposed policy aim of providing for juries that are competent, representative of society and that can be managed efficiently.
55. The majority opinion was that there should be no age limit, but there should be an automatic right to excusal for older people.
56. There was no consensus about the age at which automatic excusal should be available.

57. The Department concurred with the majority opinion and decided to increase the current excusal age from 65 to 70 on the grounds that this would improve representativeness; in recognition of improved health and demographic change since excusal at 65 was introduced in 1975; and because it was felt persons aged 65-69 are likely to have much experience to offer to juries

### **Early Guilty Pleas**

58. Three options were consulted upon:
- i) Enhancing the existing arrangements – by increasing transparency and understanding of the existing scheme.
  - ii) Reforming procedures along similar lines to neighbouring jurisdictions – to encourage early engagement between the prosecution and defence; ensure that a case against the accused can be presented at an earlier stage; a recognised ‘earliest opportunity to plead’ and; transparency in sentencing arrangements.
  - iii) Introduce a statutory presumption for a guilty plea – to introduce a new law so that the amount of sentencing credit awarded would be statutorily fixed depending on the point at which the plea was entered.
59. Option 1 recognised that there was an existing statutory power to apply credit to sentences for an early guilty plea. Under this option, the defendant would be provided with appropriate information at key points to enhance their understanding of how the court would apply this principle in their case.
60. Option 2 recognised that its introduction would require a fundamental shift in operational procedures to deliver the changes required (particularly to enable an early view of the case to be shared with the defendant, and to facilitate early and effective engagement between the prosecution and the defence).
61. Option 3 would modify the application of judicial discretion around sentencing, and specify the amount of credit to be awarded, linked to the point at which the plea was entered. This would be coupled with a presumption that where a plea was entered, credit would be given appropriate to the stage of proceedings.



62. **Outcome of consultation** - the majority of respondents supported Option 2 which can largely be given effect by non-legislative means. Some consultees also identified that Option 1 would support these new non-legislative measures. The proposed provisions are in line with that approach

### **Statutory Case Management**

63. The Department consulted on four options:
- i) A general statutory duty to progress cases - a free standing provision creating a general duty to expedite cases.
  - ii) Specific statutory duties – specifying the timescale allowed for named stages in the criminal process.
  - iii) Case management procedure rules – similar to the model in England and Wales, rules setting out the specific duties on the main parties to the case. This was the Department’s preferred option.
  - iv) Placing the current Practice Directions on a statutory footing.
64. Option 1 would have created a general statutory provision, applying to everyone working in the justice field, which would make it a legal duty to progress criminal case as swiftly as possible.
65. Under Option 2 a specific timescale for the progression of cases would be developed, with targets set for each named stage of the process and defined sanctions for a failure to meet a target.
66. Option 3 is the option which forms the basis of the Department’s proposals; it secured the most support during consultation. It establishes case management rules in similar terms to those published by the Lord Chief Justice in the practice directions, but also include specific duties on the judiciary to ensure the rules are applied. While this option does not mandate timescales, it does specify when various actions should be completed for the trial to continue. It places duties on the prosecution and the defence and not only empowers the judiciary to take action on a case by case basis against breaches but obliges them to.

67. Option 4 could be fairly viewed as direct alternative to Option III, simply taking the existing practice directions and giving them legislative backing. It would have placed the currently identified duties on the prosecution and defence on a statutory footing, but this would not include any new duties on the judiciary.
68. **Outcome of consultation** - The majority of respondents supported the Department's preferred option, (Option 3) combined with elements of Option 1. This is the basis of the legislative proposals carried in the Bill.

## **OVERVIEW**

69. The following descriptions take each Part in turn, following the sequence of the Bill. Within each Part provisions are largely in sequence though this varies on occasion to facilitate the flow of the document. This overview section is supported by the detailed Commentary on Clauses that follows.
70. The Bill has 104 clauses and 8 schedules and is divided into 10 parts. The policy description takes each part in turn, following the sequence of the Bill.

### **Single Jurisdiction for County Courts and Magistrates' Courts**

71. Court boundaries for the county courts and the magistrates' courts have historically been based upon local government districts. Under the current court boundaries model, there are limitations on the ability to manage the distribution of court business and so provide the best service to court users and ensure the most efficient use of judicial time and court resources.
72. Part 1 of the Bill creates a single territorial jurisdiction in Northern Ireland for the county courts and magistrates' courts, similar to that which already exists for the High Court, Crown Court and Coroners Service, to allow greater flexibility in the distribution of court business by allowing cases to be listed in, or transferred to, an alternative court division where there is good reason for doing so.

### **Committal for Trial**

73. Committal is a procedure used to determine whether there is sufficient evidence to justify putting a person on trial in the Crown Court. Proceedings can be in the form of oral evidence, where witnesses can be cross-examined, or as a paper exercise, carried out based on written statements and evidence. The practice of hearing oral evidence, particularly cross-examination, can have a significant impact on victims and witnesses, who may have to give (sometimes traumatic) evidence more than once.

74. Oral evidence hearings can also be very lengthy, with hearings typically lasting 1-2 days, and problems are often experienced in organising witnesses to attend, which can lead to adjournments and consequently increase delay in the magistrates' court before the case can be sent to the Crown Court. They can also be costly to the legal aid fund.
75. Part 2 of the Bill creates new measures which will reform procedures around the taking of oral evidence and cross-examination of witnesses in committal proceedings, to provide that such evidence is only to be given where, in the opinion of the court, it is required in the interests of justice. Powers are also introduced to allow direct transfer to the Crown Court of those cases in which there is a guilty plea as well as direct transfer for certain indictable offences, beginning with murder and manslaughter cases.

### **Prosecutorial Fines**

76. Part 3 of the Bill introduces new arrangements in the form of a prosecutorial fine that will enable certain offences to be dealt with proportionately, and at an early stage, without recourse to court prosecution, thereby enabling prosecutorial resources to be better directed to prosecuting more serious offending, and dispensing with the requirement of an investigating officer appearing in court.
77. The prosecutorial fine will create new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court. It is proposed also that the prosecutor should have a power to attach a financial compensation order to the proposed penalty in cases of criminal damage only. Recipients of a prosecutorial fine will avoid a formal criminal record if the disposal is accepted and paid, although the criminal justice system will retain a record of such disposals to inform decisions on any future offending by the recipients of prosecutorial fines

### **Victims and Witnesses**

78. Part 4 of the Bill contains provisions that will improve the experience of victims and witnesses in the criminal justice system, clearly setting out the services that are to be provided and the standard of service that victims and witnesses can expect to receive. Given the duties that will be imposed on criminal justice agencies it should also give rise to a greater focus on the needs of victims and witnesses across the criminal justice system. Combined with changes to reduce undue delay this should lead to a

substantial improvement in the victims and witnesses experience of the criminal justice system.

79. The establishment of Victim and Witness Charters are key strands of the new five year strategy for victims and witnesses of crime. Too often victims and witnesses are unclear as to what services are available to them, when they should be provided with information on their case and what measures are available to provide them with support and also help them give their best evidence where they attend court as a witness. The Victim and Witness Charters will address this by clearly setting out what services are to be provided to victims, the standards of service they can expect to receive and a clear indication of how they should be treated by specified criminal justice agencies.
80. A key concern for victims is getting adequate support to meet their needs as they move through the criminal justice system and being provided with information on the progress of their case, even if that is simply to say that there has been no change. The Victim and Witness Charters will make the journey through the criminal justice system easier and simpler by clearly setting out the services that are available, who provides these services and the key stages in the process that victims and witnesses can expect to receive information on their case (including when and from whom). The Charter will also make clear who to contact should the service provided not be as expected or entitlements set out under the Charter are not provided
81. Providing a statutory entitlement to be afforded the opportunity to make a victim personal statement will ensure that victims can make their views known about the impact of the offence, ahead of sentencing, where a person is convicted of a crime. Given that there should also be increased awareness of the ability to make a statement, this will assist in improving victim's experience of the criminal justice system.
82. Finally, the Bill makes provision to enable relevant details of victims and witnesses of crime to be shared by the police and Public Prosecution Service, to certain criminal justice system service providers, in order that they can be advised of relevant support services and information schemes. The purpose is to ensure that victims and witnesses are provided with relevant information, at the appropriate time, about available services and can make an informed decision about whether or not to avail of those services.

## **Criminal Records**

83. Part 5 of the Bill introduces a number of improvements to streamline the arrangements for, and additional protections relating to, the disclosure of criminal record checks. These include making criminal record checks portable and allowing for on-line updating in certain circumstances; accepting applications made by electronic transmission; changing from the current system of issuing two certificates for standard and enhanced checks (one to the Registered Body and the other to the applicant), to a system of issuing a single certificate to the applicant only; introducing arrangements to allow self-employed persons to obtain enhanced criminal record certificates; and allowing for the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.
84. The Bill also provides that criminal record checks should not be carried out for those under 16 years of age, except in certain prescribed circumstances; and that an individual under the age of 18 applying for registration must satisfy the Department that there is good reason for being registered.
85. A number of changes are made relating to the disclosure of “relevant information” as part of a criminal record check. These include making provision for statutory guidance – which must be published - to assist police in deciding what information should be released and for the establishment of an independent representations process for those who wish to dispute “relevant information” provided by a chief officer of police.
86. Provision is also made for the introduction of a review mechanism for the filtering scheme operated by AccessNI, enabling a person to seek, in certain circumstances, a review of their case where a conviction or other disposal has not been filtered from their standard or enhanced criminal record certificate.

## **Child Protection Disclosures**

87. Part 6 introduces Child Protection Disclosures to Northern Ireland to allow for the consideration of disclosure of conviction information in relation to any offender who falls within the public protection arrangements for Northern Ireland.

## **Live Links**

88. Part 7 of the Bill provides an expansion in court services by extending the range of matters that can be dealt with by way of “live link”. When evidence is given by live link a room is provided outside the courtroom where the witness can give evidence via a live television link to the courtroom. This means that the witness will be able to see the courtroom, and that those in the courtroom, including the defendant, will be able to see the witness through a television screen.
89. The additional “live link” provisions being created will introduce the use of live links for certain types of witness; hearing; court; and court-related proceedings in the interest of witnesses and the delivery of a more efficient justice system. The provisions do not change a patient’s or defendant’s entitlement to be present at a hearing nor do they alter the right to consult privately with their legal representative before, during or after a live link. As a package they are designed to increase the use of live links in courts, prisons and hospital psychiatric units providing a cost effective and secure means for patients/defendants to participate in hearings.

## **Violent Offences Prevention Orders**

90. Part 8 makes provision for the introduction of a new civil preventative measure – a Violent Offences Prevention Order (VOPO) – to help mitigate the risk of violent re-offending from certain offenders.
91. The VOPO will allow the court to place relevant conditions on the behaviour of a violent offender, and those subject to the order would also be made automatically subject to notification requirements. This involves the requirement to notify specified personal details to police (similar to those notified by sex offenders under the terms of the Sexual Offences Act 2003).
92. A VOPO can be made by the court in two ways: on conviction; or following application made by the police at a subsequent stage. It does not form part of a person’s sentence nor is it automatically applied to all violent offenders. Rather, it can only be made following a determination by the court on the basis of the information and evidence presented to it. Specifically, an order can only be made where the court is satisfied that it is necessary for the purpose of protecting the public from the risk of serious violent harm caused by the offender.
93. The VOPO has been developed similar to the legislative framework of the Sexual Offences Prevention Order (SOPO) and is intended to complement existing public protection measures, such as public protection sentences.

## **Miscellaneous**

94. Part 9 provides for improvements to a range of miscellaneous powers available to courts along with several other business improvement matters. For Jury Service, provisions provide for the abolition of the upper age limit for jury service (currently age 70), to be replaced with an automatic right of excusal for those over 70; an increase of the current age for automatic excusal from 65 to 70; and various tidy-up provisions.
95. For Unpaid community service after release, a power allows the Department to make regulations that may require a person released under the terms of the Conditional Early Release Scheme (under Article 19 of the Criminal Justice (NI) Order 2008) to engage in unpaid community service during the period of their early release.
96. For Personal samples, DNA profiles and fingerprints, a number of changes are made to the new DNA and fingerprints retention framework as set out in Schedule 2 of the Criminal Justice Act (Northern Ireland) 2013 to close a number of gaps in the provisions and ensure that the new regime operates as originally intended.
97. For Early guilty pleas, a statutory provision is introduced to encourage the use of earlier guilty pleas in Northern Ireland. The provisions will provide legislative support to a (non-legislative) scheme being developed to provide a structured early guilty plea scheme in the magistrates' courts and the Crown Court. The provisions will: (i) require a sentencing court to state the sentence that would have been imposed if a guilty plea had been entered at the earliest reasonable opportunity and; (ii) place a duty on a defence solicitor to advise a client about the benefits of an early guilty plea.
98. For Sexual offences against children, an amendment is made to the existing child grooming offence in the Sexual Offences (Northern Ireland) Order 2008 to reduce the number of times an adult has to have met, or communicated with, a child before meeting them, or travelling to meet them, from two to one. A new offence of 'sexual communication with a child' is also created, which will criminalise an adult who intentionally communicates with a child, where the content of the communication is sexual, or is intended to cause or incite a child to communicate sexually.
99. The Bill also introduces a statutory framework for the management of cases. Through regulation, the Department of Justice will be able to impose duties on the prosecution, defence, and the court, which set out what must be completed prior to the commencement of court stages. There is also to be a general duty on the court, prosecution and the defence to reach a just outcome as swiftly as possible in relation to criminal proceedings.

100. Under Public Prosecutor's summons, provisions will allow a Public Prosecution Service prosecutor to issue a summons to a defendant without first having to get a Lay Magistrate to sign the summons, thereby streamlining procedures and helping to speed up the process in summons cases by reducing the time taken between the decision to prosecute and first appearance in court.
101. Under Defence access to premises, a power is introduced to fill a gap which currently exists, so that, in cases where access to premises is not agreed, the defendant will have recourse to the court in order to properly prepare his defence (or appeal).
102. For Court security officers, a lacuna is closed to enhance the security of court venues and court users by specifying that a Court Security Officer's powers to search, exclude, remove or restrain an individual is extended to include the grounds on which the court buildings sit.
103. For Children or vulnerable adults, changes to Section 5 of the Domestic Violence, Crime and Victims Act 2004 are offered to extend the offence of causing or allowing the death of a child or vulnerable adult to include "suffering serious physical harm" to close a current gap in the legislation in cases where prosecutions for child cruelty or serious injury fail because there is insufficient evidence as to which member of the household was responsible.
104. Under Domestic Violence Protection Notices and Orders, provisions are included that provide for the police and the courts to have the power to issue protection notices and orders aimed at ensuring the immediate protection of victims or potential victims of domestic violence
105. Changes to Youth Justice arrangements are provided in the form of amendments to the Aims of the Youth Justice System in Northern Ireland, articulated in Section 53 of the Justice (NI) Act 2002, to reflect the best interests principle as set out in Article 3 of the UN Convention on the Rights of the Child (UNCRC); and a technical adjustment to delete transitional arrangements relating to detention orders in subsection 10.5 of the Criminal Justice Act (NI) 2013 that are no longer needed and which it was feared may not be ECHR-compliant.
106. A minor change is effected to the arrangements for determining the salary of the member of the Lands Tribunal and, finally, in this Part of the Bill, an amendment is made to the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 so that in addition to charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in either England and



Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland.

### **Supplementary Provisions**

107. Part 10 provides supplementary and transitional provisions. It provides for the making of regulations or orders under the Bill; interpretation; transitional provisions and savings; and minor and consequential amendments and repeals. It provides powers of commencement. Seven sections come into effect on Royal Assent and the remainder will come into effect by order.

### **COMMENTARY ON CLAUSES**

#### **Part 1: Single Jurisdiction for County Courts and Magistrates' Courts**

Part 1 of the Bill creates a single jurisdiction in Northern Ireland for the county courts and magistrates' courts, replacing statutory county court divisions and petty sessions districts with administrative court divisions. This will allow greater flexibility in the distribution of court business by enabling cases to be listed in, or transferred to, an alternative court division where there is good reason for doing.

#### **Clause 1: Single jurisdiction: abolition of county court divisions and petty sessions districts**

This clause creates a single territorial jurisdiction for the county courts and magistrates' courts by providing that:

- Northern Ireland is no longer to be divided into county court divisions and petty sessions districts; and
- the courts' jurisdiction and powers are exercisable throughout Northern Ireland.

#### **Clause 2: Administrative court divisions**

This clause confers a power on the Department of Justice to divide Northern Ireland into administrative court divisions, after consultation with the Lord Chief Justice, and allows for Departmental directions to specify different administrative court divisions for different court purposes.

**Clause 3: Directions as to distribution of business**

This clause confers a power on the Lord Chief Justice to give directions detailing the arrangements for the distribution of business among the county courts and magistrates' courts, and for the transfer of business from one court to another. The clause also allows the Department to give directions as to the distribution among the chief clerks and clerks of petty sessions of the exercise of any functions conferred by any statutory provision on them.

**Clause 4: Lay magistrates**

This clause re-enacts section 9 of the Justice (Northern Ireland) Act 2002, with amendments so that a lay magistrate will have jurisdiction throughout Northern Ireland, and will be appointed to an administrative court division.

The clause also provides that a lay magistrate shall sit in accordance with directions issued by the Lord Chief Justice, and that in issuing such directions, the Lord Chief Justice shall have regard to the desirability of lay magistrates sitting in courts reasonably close to where they live or work.

Finally, the clause confers a power on the Department, after consultation with the Lord Chief Justice to make further provision regarding eligibility for appointment as a lay magistrate which may include provision that may require a person to live or work in or within a specified distance of the administrative court division to which they are to be appointed.

**Clause 5: Justices of the peace**

This clause re-enacts section 103 of the Judicature (Northern Ireland) Act 1978, with amendments so that justices of the peace shall have jurisdiction throughout Northern Ireland. The clause also provides for the centralisation of record-keeping in relating to justices of the peace, so that the Department will be responsible for these.

**Clause 6: Consequential amendments**

This clause provides for the consequential amendments contained in Schedule 1 to have effect. The clause also contains an order making power so that the Department may make supplementary, incidental or consequential provisions as required by secondary legislation in consequence of or to give effect to this Part of the Bill.

## **Part 2: Committal for trial**

Part 2 of the Bill reforms the committal process to reform the use of preliminary investigations and the use of oral evidence at preliminary inquiries; provide for the direct committal to the Crown Court of certain indictable cases where the defendant intends to plead guilty at arraignment; and provide for the direct committal to the Crown Court of certain specified offences.

### **Chapter 1 – Preliminary investigations and mixed committals**

#### **Clause 7: Preliminary investigations**

This clause amends the Magistrates’ Courts (NI) Order 1981 (“the 1981 Order”) by inserting a new Article 29A. This provides that committal proceedings in a magistrates’ court shall be conducted by way of a preliminary investigation where the courts so directs, and in all other cases, shall be by way of a preliminary inquiry. An accused may apply to the court for a direction that a preliminary investigation is to be held, and the court may grant such an application only if it is satisfied that a preliminary investigation is necessary in the interests of justice..

#### **Clause 8: Mixed committals: evidence on oath at preliminary inquiry**

This clause amends Article 34(2) of the 1981 Order (giving of evidence on oath at a preliminary inquiry) to provide that the prosecution or the accused may apply to the court for leave to require the giving of evidence on oath at a preliminary inquiry. Such leave will only be granted if, in the opinion of the court, this is necessary in the interests of justice.

### **Chapter 2 – Direct committal for trial in certain cases**

#### **Clause 9: Application of this Chapter**

This clause provides that the direct transfer provisions apply where an accused person appears before a magistrates’ court charged with an offence and certain conditions are satisfied.

#### **Clause 10: Direct committal: indication of intention to plead guilty**

This clause makes provision for the direct committal (without conducting committal proceedings) of an accused person to the Crown Court who wishes to plead guilty to an offence.

**Clause 11: Direct committal: specified offences**

This clause provides for the direct committal to the Crown Court for trial where an accused person is charged with a specified offence.

**Clause 12: Direct committal for trial: offences relating to specified offences**

This clause provides for the direct committal to the Crown Court for trial of a co-accused person who is charged with an offence related to a specified offence

**Clause 13: Direct committal: procedures**

This clause prescribes the procedures to be followed in relation to direct committal, including the giving of notice to, and service of documents upon the accused and the Crown Court.

**Clause 14: Specified offences: application to dismiss**

This clause prescribes the procedures to enable an accused person who has been directly committed to the Crown Court to apply to the court to have the charge or charges dismissed.

**Clause 15: Restrictions on reporting applications for dismissal**

This clause makes provision for reporting restrictions in relation to applications for dismissal of a charge or charges.

**Clause 16: Supplementary and consequential provisions**

This clause gives effect to Schedule 3 to the Bill, which contains amendments consequential to the provisions on direct committal, and makes further supplementary provision.

**Part 3: Prosecutorial Fines**

Part 3 of the Bill creates new powers to enable public prosecutors to offer lower level offenders a financial penalty, up to a maximum of £200 (the equivalent of a level 1 court fine) as an alternative to prosecution of the case at court.

## **Prosecutorial Fine**

### **Clause 17: Prosecutorial fine: notice of offer**

This clause empowers a prosecutor to issue a notice offering an alleged offender over age 18 a prosecutorial fine for one or more summary offence(s) and specifies the information which the notice must contain. The notice of offer will indicate that refusal of the offer may result in prosecution for the offence, and that acceptance of the offer discharges the alleged offender's liability for that offence. The alleged offender is given 21 days to accept or reject the offer, and no further proceedings may be undertaken during this 21 day period. If the prosecutorial fine notice of offer is accepted, then a prosecutorial fine notice will be issued.

### **Clause 18: Prosecutorial fine notice**

This clause is engaged if an offender accepts the offer of a prosecutorial fine. On receipt of acceptance of a prosecutorial fine offer, a prosecutor must issue a prosecutorial fine notice to an alleged offender, containing details of the offence and how payment of the fine may be made. The clause requires payment of the fine within 28 days of the date of issue of the notice, and requires the prosecutor to alert the fines clerk that a fine notice has been issued.

### **Clause 19: Amount of prosecutorial fine**

This clause defines the amount of the prosecutorial fine as the total of the amount determined by the prosecutor plus a £10 offender levy. The clause also provides that in the case of an offence of criminal damage the prosecutor may also order an amount of compensation in respect of damage caused to be paid to a victim. The clause sets the maximum value of a prosecutorial fine at £200 (level 1 on the standard fine scale) and the maximum compensation at £5000 (the maximum compensation awardable in a Magistrate's court).

### **Clause 20: Restrictions on prosecutions**

This clause places restrictions on the issue of a prosecutorial fine. It prevents further action being taken against an alleged offender for the alleged offence within 21 days of the issue of a notice of offer. If the prosecutorial fine is paid before the end of the suspended enforcement period no proceedings may be brought for the offence.

## **Payment of prosecutorial fine**

### **Clause 21: Payment of prosecutorial fine**

This clause sets out the detailed arrangements for the payment of a prosecutorial fine. Sums paid by way of a prosecutorial fine for an offence are treated as if they were fines imposed on summary conviction of that offence to allow the use of existing court fine recovery and compensation payment mechanisms.

## **Non-payment of prosecutorial fine**

### **Clause 22: Failure to pay prosecutorial fine**

This clause details the process to be undertaken if a prosecutorial fine is unpaid when the 28 day period allowed for payment has elapsed. In this case the fine is increased by 50% and the total amount is pursued as a court fine. Only the fine and offender levy elements are increased, the compensation element (if any) is not.

### **Clause 23: Registration certificates**

This clause requires a prosecutor to raise a certificate of registration to allow a defaulted fine to be pursued by a fines clerk.

### **Clause 24: Registration of sum payable in default**

This clause allows enforcement of the defaulted fine through existing court mechanisms.

### **Clause 25: Challenge to notice of registration**

This clause allows an alleged offender to challenge the issue of a prosecutorial fine on the basis of mistaken identity.

### **Clause 26: Setting aside of sum enforceable under section 24**

This clause allows a court to set aside the sum imposed by a prosecutorial fine and declare the disposal void.

## **Interpretation**

### **Clause 27: Interpretation of this Part**

This clause defines the terms used in the legislation pertaining to prosecutorial fines.

## **Part 4: Victims and Witnesses**

Part 4 of the Bill improves services and facilities for victims and witnesses by providing for the establishment of statutory Victim and Witness Charters, providing a statutory entitlement to be afforded the opportunity to make a victim personal statement and facilitating the sharing of information between criminal justice system service providers..

## **The Victim Charter and the Witness Charter**

### **Clause 28: Victim Charter**

This clause places a duty on the Department to issue a Victim Charter setting out the services, standards of services and treatment of victims by specified criminal justice agencies. It highlights what services must be covered by the Charter and enables exceptions and restrictions to be applied to the Charter's general provisions that would allow a more targeted service to be provided. Clause 28 also makes provision enabling the services to a victim to be provided to others as well as the victim and requires criminal justice agencies to have regard to the Charter in carrying out their functions.

### **Clause 29: Meaning of victim**

This clause defines a victim, sets out other people to be treated as a victim (for example where a person has died or is incapacitated) and circumstances where this would not apply. It enables the Charter to set out who are family members for this purpose.

### **Clause 30: Witness Charter**

This clause places a duty on the Department to issue a Witness Charter setting out the services, standards of services and treatment of witnesses in criminal investigations and criminal proceedings by specified criminal justice agencies. It enables exceptions and restrictions to be applied to the Charter's general provisions that would allow a more targeted service to be provided. The clause also makes provision enabling the services provided to a witness to be provided to others as well as, or instead of, the witness and requires criminal justice agencies to have regard to the Charter in carrying out their functions.

**Clause 31: Procedure for issuing Charters**

This clause sets out the procedure for issuing a Victim or Witness Charter (and also a revised Charter), including laying it before the Assembly and being brought into operation by order.

**Clause 32: Effect of non-compliance**

This clause sets out the effect of non-compliance with a Charter.

**Victim statements**

**Clause 33: Persons to be afforded opportunity to make victim statement**

This clause provides that a victim is to be afforded an opportunity to make a written victim statement (to be known as a victim personal statement), setting out the effect of an offence or alleged offence. Regulations may provide for others to be afforded the opportunity, setting out when, how and by whom the opportunity should be afforded. A family member may make a statement, where a person cannot act on their own behalf or the victim has died

**Clause 34: Supplementary statement**

This clause enables Regulations to make provision related to supplementary victim personal statements.

**Clause 35: Use of victim statement**

This clause enables Regulations to set out the use of the victim personal statement and make provision for the court to have regard to so much of any statement that it considers relevant to the offence in determining a sentence.

**Clause 36: Disclosure for purposes of victim and witness support services and victim information schemes**

This clause gives effect to the insertion of Schedule 3, which provides for the sharing of relevant information about victims and witnesses to service providers so that victims and witnesses can be advised about available services.



## **Part 5: Criminal Records**

This part modernises arrangements for the disclosure of criminal records by allowing for: electronic applications; portable disclosures; the issuing of single certificates; an independent appeals mechanism and guidance in relation to “relevant information” provided by a chief officer of police; a review mechanism in respect of information that has not been filtered by AccessNI; and a range of other improvements.

### **Clause 37: Restriction on information provided to certain persons**

This clause repeals section 101 of the Justice Act (Northern Ireland) 2011 and sections 113A(4) and 113B(6) of the Police Act 1997 Act (the 1997 Act) which require that an employer or registered person should be sent a copy of a certificate. Such provision is no longer required as only applicants will routinely receive a copy of a certificate. As a consequence, it also makes provision for registered persons to have access to information about certain certificates that stop short of indicating whether any criminal convictions or other information has been provided on that certificate. It also provides, in respect of the update service, that AccessNI must, in certain circumstances, send a copy of a standard or enhanced certificate to the registered person.

The clause also repeals section 113B(5) of the 1997 Act under which information, which might be relevant, may be provided to a registered person without it being copied to the applicant. This is not regarded as human rights compliant and the PSNI have not used the powers for some time and have no plans to do so.

### **Clause 38: Minimum age for applicants for certificates or to be registered**

This clause provides that children under 16 should not be subject to criminal record checks except in prescribed circumstances (such as those in home-based occupations) and that an individual under the age of 18 applying for registration must satisfy the Department that there is good reason for being registered.

### **Clause 39: Additional grounds for refusing an application to be registered**

This clause provides a power to refuse to register an individual or organisation that has previously been removed from the register as a result of a breach of the Department’s Code of Practice and / or Conditions of Registration as set out within the Police Act 1997 (Criminal Records) (Registration) (Regulations) (Northern Ireland) 2007.

**Clause 40: Enhanced criminal record certificates: additional safeguards**

This clause replaces the duty on the Department to send applications for enhanced disclosures to relevant police forces with a duty to send these to relevant chief officers. It also amends the ‘relevancy’ test in section 113B(4)(a) of the 1997 Act to be applied by a chief officer when determining whether information should be included in an Enhanced criminal record certificate from information which ‘might be relevant’ and ought to be included in the certificate, to a higher test of information which the chief officer ‘reasonably believes to be relevant’ and which ought to be included in the certificate.

The clause also makes provision for statutory guidance to be published to which chief officers must have regard in discharging their functions under section 113B(4) of the 1997 Act. It also allows parties other than the applicant to dispute the accuracy of the information contained in a certificate.

Finally, the clause allows a person to apply to the Independent Monitor (appointed under section 119B of the 1997 Act) to determine whether information provided under section 113(B)(4) of the 1997 Act is relevant or ought to be included on an enhanced criminal record certificate.

**Clause 41: Review of criminal record certificates**

This clause inserts section 117B and Schedule 8A into the 1997 Act to make provision for a review mechanism as part of the filtering scheme operated by AccessNI. The review process will be undertaken by an independent person appointed by the Minister of Justice. It will enable a person to seek, in certain circumstances, a review of their case where a conviction or other disposal has not been filtered from their standard or enhanced criminal record certificate. The provision includes an automatic referral for cases where disclosures relate only to spent convictions or other disposals committed under the age of 18.

The clause also provides for the publication of guidance to which the independent reviewer must have regard in exercising his or her functions under Schedule 8A to the 1997 Act.

**Clause 42: Up-dating certificates**

This clause inserts section 116A into the 1997 Act. This makes provision for updating arrangements. Currently, an individual has to apply for a new certificate for each job or volunteering opportunity for which a certificate is required as the information on it is only valid when issued. Updating arrangements will make a certificate portable (allowing an individual to use their certificate for a variety of positions).

The provisions enable the Department to permit a relevant person - in many circumstances this will be an employer - to ask, subject to certain conditions, whether or not there is any new information. This will be done by means of an on-line facility and will enable the relevant person to establish if the information on the certificate remains valid and up to date and whether or not a new certificate should be requested. The clause includes the provision that the Department must not grant an application for an enhanced criminal record certificate to be subject to up-date arrangements if the certificate contains (or would contain) information which relates to a third party.

**Clause 43: Applications for enhanced criminal record certificates**

This clause makes provision in section 113B of the 1997 Act for those who are self-employed to apply for an enhanced certificate. Section 113B(2)(b) currently provides that an application must be accompanied by a statement by the registered person that the certificate is required for the purposes of an exempted question asked for a prescribed purpose. (The term Exempted question is defined in Section 113A(6) and demonstrates in broad terms that the certificate is required for a purpose that has been excluded from the Rehabilitation of Offenders (Northern Ireland) Order 1978 by the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979). If the position is one where the individual is self-employed the registered person is unable to provide such a statement. Clause 41 will enable self-employed persons to provide, under Section 113B of the 1997 Act, a statement that the certificate is required for the purposes of an exempted question asked for a prescribed purpose. Applications from a self-employed person must be submitted to AccessNI via a registered person in the same way that other applications are made. This means that the registered person will carry out functions such as checking identity.

**Clause 44: Electronic transmission of applications**

This clause makes provision in sections 113A and 113B of the 1997 Act for applications for standard and enhanced certificates to be sent electronically by inserting a new subsection (2A).

**Clause 45: Disclosures by the Department of Justice to the Disclosure and Barring Service**

This clause makes provision for the exchange of information between AccessNI and the Disclosure and Barring Service for barring purposes.

**Clause 46: Inclusion of cautions and other diversionary disposals in criminal records.**

This clause provides statutory cover for the storage of cautions and other diversionary disposals on the criminal history database.

**Clause 47: Consequential amendments**

This clause makes provision for the consequential amendments in Schedule 4 to have effect

**Part 6: Child Protection Disclosures**

This part introduces Child Protection Disclosures to Northern Ireland to allow the consideration of disclosure of conviction information in relation to any offender who falls within the public protection arrangements for Northern Ireland.

**Clause 48: Child protection disclosures**

This clause amends Part 3, Articles 49 and 50 of the Criminal Justice (Northern Ireland) Order 2008.

Article 49 is amended to include three further definitions: a child; a conviction; and a relevant previous conviction.

It defines a child as a person under the age of 18 years. It specifies that a conviction includes: a conviction by or before a court outside Northern Ireland; any finding (other than that linked to insanity) in criminal proceedings that a person has committed an offence or done the act or made the omission charged; or a caution given to a person in respect of an offence which the person admitted when cautioned. It defines relevant previous conviction as a conviction made for a sexual or violent offence which falls within a specified description of persons (specified in guidance under Article 50).

Article 50 is amended to provide new paragraph (2A). The effect is that guidance to agencies, used to assess and manage certain risks to the public, must contain provisions about arrangements for considering the disclosure of information on relevant previous convictions of a person, where it is necessary to protect a particular child, or children, from serious harm caused by that person. Provision may also be included in the guidance to prevent a person from disclosing the information to another person.

**Part 7: Live Links in Criminal Proceedings**

This part expands provision for the use of live video link ('live link') facilities in courts to include committal proceedings, certain hearings at weekends and public holidays, and proceedings relating to failure to comply with certain order or licence conditions. Live links will also be available for witnesses before magistrates' courts from outside the United Kingdom and for patients detained in hospital under mental health legislation, and they will be the norm for evidence given by certain expert witnesses.

**Clause 49: Live Links: accused at committal proceedings**

This clause allows for the accused ('A') to appear and give evidence by live link in committal proceedings in magistrates' courts, if A is likely to be held in custody or detained in hospital during the proceedings. The clause includes several safeguards, such as requiring A's consent to a live link direction; the parties must have been given the opportunity to make representations; and the court must be satisfied that it is not contrary to the interests of justice for A to appear or give evidence by live link. Courts are required to adjourn proceedings under this clause where A, attending by live link, cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. The clause also includes the procedure for giving or rescinding a direction, as well as the requirement that the court state and record its reasons for refusing or for rescinding a direction.

**Clause 50: Live links from another courtroom: first remands, etc.**

This clause provides for certain persons to attend court hearings by live link at weekends and public holidays. This will allow, for example, for a small number of courts to hear certain cases, with defendants or offenders attending by live link from other courthouses. Subsection (1) sets out the sorts of hearing covered – these all involve the person's first appearance at court following arrest or charge in specified circumstances.

The clause contains safeguards including that the court must be satisfied that it is not contrary to the interests of justice for the person to appear by live link. Courts are required to adjourn proceedings under this clause where the accused person, attending by live link, cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. It also lays down the procedure for giving or rescinding a live link direction.

The clause provides that the Department may, by order, amend the type of hearings that may be covered and the days of the week that live links can be used for these purposes. Such an order would be subject to the affirmative resolution procedure.

**Clause 51: Live Links: proceedings for failure to comply with certain orders or licence conditions**

This clause allows for live links to be used in proceedings where a person, already being held in custody, has to be brought before the court for failing to comply with a specified court order or with conditions under which a sexual offender is released on licence.

The clause includes several safeguards, such as requiring the offender's consent before the court can direct that a live link be used, and the court must be satisfied that it is not contrary to the interests of justice for the offender to appear in this manner.

A further safeguard is the requirement on courts to adjourn proceedings for failure to comply with certain orders or licence conditions where the offender attending by live link cannot see or hear the court and be seen or heard by it, and this cannot be corrected immediately. The clause also includes the procedure for giving or rescinding a live link direction. For example, in the case of a magistrates' court it must state and record its reasons for refusing or rescinding a direction.

The orders covered by these provisions are various community-related sanctions (eg probation) and sanctions for young persons (eg attendance centre orders, supervision orders). The clause also enables the Department, by subordinate legislation, to add breaching other court orders made upon conviction and breaching conditions of other release licences. This would be by the affirmative resolution procedure.

**Clause 52: Live Links: expert witnesses**

This clause provides that, where certain expert witnesses are to give evidence, the court's starting assumption should be that the expert's evidence will be given by live link. The sorts of expert witness to whom these provisions apply are to be set out in Regulations made by the Department (and subject to affirmative resolution). For instance, this might be the prosecution's forensics or telecommunications experts.

The relevant experts would be expected to appear at certain hearings by live link from their place of work, thus saving them from travelling to court and therefore saving the costs, time and work associated with that travel. The hearings affected are preliminary hearings, trials and appeals.

As a consequence, the current application process of having to actively apply for a live link direction will be reversed to one of application for personal appearance. A 'personal appearance' direction would only be given if it were in the interests of justice and the efficient administration of justice.

**Clause 53: Live Links: witnesses outside the United Kingdom**

This clause enables witnesses to give evidence from outside the United Kingdom to a magistrates' court in Northern Ireland in certain proceedings. Currently evidence may only be taken in a magistrates' court by live from witnesses outside Northern Ireland if they are situated elsewhere within the UK. This will help to reduce delays caused by scheduling the appearance of overseas witnesses in person during proceedings.

**Clause 54: Live Links: patients detained in hospital under Mental Health Order**

This Clause extends the use of live links in certain court proceedings to include patients detained in hospital under Part 2 of the Mental Health (NI) Order 1986 – patients compulsorily admitted to hospital for psychiatric assessment or treatment. Under existing legislation, only Part 3 psychiatric patients – those compulsorily admitted to hospital via the criminal justice system – are able to appear by live link. (The proceedings affected are for accused persons in preliminary hearings, sentencing hearings and related appeals.)

**Part 8: Violent Offences Prevention Orders**

Part 8 of the Bill creates a new tool – the Violent Offences Prevention Order (VOPO) - to assist relevant criminal justice agencies in the management of risk from violent offending. The VOPO, as a preventative measure, will benefit offenders in terms of helping to prevent the committal of further offences and will also benefit those affected by crime, by reducing the risk of, and the fear of, crime, which could lead to a potential decrease in the number of victims of crime and potential victims of crime.

**Violent offences prevention orders**

**Clause 55: Violent offences prevention orders**

This clause defines a VOPO. It establishes that the order may contain such prohibitions or requirements as the court making the order considers necessary, in order to protect the public from the risk of serious violent harm caused by the offender.

It provides that an order can be made for a minimum period of two years, up to a maximum term of five years, unless the order is renewed or discharged by the court.

It defines the term ‘serious violent harm’ as ‘serious physical or psychological harm caused by a person committing one or more specified offences’. A ‘specified offence’ is defined as an offence listed in Part 1 of Schedule 2 to the Criminal Justice (Northern Ireland) Order 2008 (violent offences) .

It also provides a more restricted specification for the offence of assault occasioning actual bodily harm as a specified offence. The public is defined as being, either the general public, or any particular member of the public.

**Clause 56:** Violent offences prevention order made on conviction, etc

This clause allows the court to make a VOPO at the point it is dealing with the offender in respect of a specified offence; or where the person is found not guilty of a specified offence by reason of insanity; or is unfit to be tried and has done the act charged in respect of a specified offence.

The court may make a VOPO where it is satisfied that it is necessary for the purpose of protecting the public from the risk of serious violent harm. A VOPO can be made in respect of specified offences committed (or alleged to have been committed) before, or after, commencement of this provision.

**Clause 57:** Violent offences prevention order made on application of Chief Constable

This clause allows the Chief Constable to apply to the court for a VOPO in respect of a qualifying person who has, since the ‘appropriate date’, acted in such a way as to give him reasonable cause to believe that it is necessary for an order to be made.

It defines ‘appropriate date’ as the date the person was convicted of a specified offence, found not guilty of a specified offence by reason of insanity, or where he or she was found to be unfit to be tried and to have done the act charged in respect of a specified offence. The application may be made in respect of those who reside in Northern Ireland, or who the Chief Constable believes is in, or is intending to come to, Northern Ireland.

In determining the necessity for a VOPO, the court must take into account whether the person is subject to any other statutory measures that would operate to protect the public from the risk of serious violent harm. The court must also be satisfied that the person qualifies for an order, and that the order is necessary for the purpose of protecting the public from the risk of serious violent harm from the person concerned.

**Clause 58:** Qualifying offenders

This clause sets out what is meant by the term ‘qualifying offender’ in relation to applications made by the Chief Constable for a VOPO. A person can qualify if he or she has been: convicted of a specified offence or; found not guilty of a specified offence by reason of insanity or; found unfit to be tried and to have done the act charged in respect of a specified offence. This includes those offences or acts committed before, or after, commencement of this provision.



It also provides for offences committed outside Northern Ireland, in those cases where an act constituted a criminal offence in the country where it was committed and would have constituted a specified offence if it had have been committed in Northern Ireland. It stipulates that an act punishable under the law of a country outside Northern Ireland constitutes an offence under that law; however it is described in that law. This includes those offences or acts committed before, or after, commencement of this provision.

It sets out that in those cases where an application for a VOPO is made by the Chief Constable, an act committed in a foreign jurisdiction which is an offence under that law, will be taken to be an act that would have constituted a specified offence if committed in Northern Ireland, unless the person (to whom the application relates) serves notice on the Chief Constable applying for the order denying that this is the case.

The person must give reasons for this and require the Chief Constable to prove the condition is met. It also allows the court to permit the person to require the Chief Constable to prove the condition is met, without having served such a notice.

**Clause 59:** Provisions that violent offences prevention orders may contain

This clause specifies the prohibitions or requirements (or both) that the court may impose as part of the VOPO.

It stipulates that the order may only include those prohibitions or requirements that are necessary for the purpose of protecting the public from the risk of serious violent harm from the person to whom the order relates.

**Clause 60:** Variation, renewal or discharge of violent offences prevention orders

This clause allows a person who is the subject of a VOPO, or the Chief Constable, to apply to the court for the VOPO to be varied, discharged, or renewed.

A VOPO may not be discharged before the end of the period of two years, beginning with the date on which it comes into force, unless consent to its discharge is given by the person to whom it relates, and the Chief Constable. A renewal order would be subject to a five year maximum limit. The variation of an order can impose additional prohibitions or requirements on the person.

A renewal or variation of an order can only be made if the court considers that it is necessary to do so for the purpose of protecting the public from the risk of serious violent harm caused by the person, and can only contain such prohibitions or requirements, as the court considers is necessary.

**Clause 61: Interim violent offences prevention orders**

This clause allows the court to make an interim VOPO, where an application for a main VOPO is, or has been, made. The interim order will enable prohibitions or requirements to be placed on the person's behaviour pending determination of the main order. It specifies that the interim order can be imposed for a fixed period, as defined in each order and that an interim order will cease to have effect at the end of this fixed period or (if before), when a decision is taken on the main application.

It ensures that an interim order can only be made when the court is satisfied that the individual qualifies for an order; that the court would be likely to make a main order; and that it is considered desirable to act before the determination of the main application to secure immediate public protection from the risk of serious violent harm caused by the person concerned.

An interim order cannot come into force whilst a person is subject to a custodial sentence or is detained in hospital. An interim order can be varied or discharged in the same way as a main order.

**Clause 62: Notice of applications**

This clause provides that a court may not begin to hear an application for a main or an interim VOPO, or an application to vary, discharge or renew a VOPO, unless it is satisfied that the person to whom it will be subject has been given reasonable notice of the application, and the time and place of the hearing.

**Clause 63: Appeals**

This clause provides for appeals to be made to the appropriate court against the making of a main or interim VOPO, or the making, or refusal to make a renewal, variation or discharge of a VOPO.

It provides that where an appeal is made against the making of a VOPO on conviction, the court will deal with the matter as if the order were a sentence passed on the person for a specified offence. Those appeals brought against the making of a VOPO as a consequence of an application by the Chief Constable, are to be made to the county court.

A person may also appeal the making of an order to vary, discharge or renew an order, or the refusal to make such an order. Where the original VOPO application was made to the Crown Court, the appeal must be brought to the Court of Appeal. In any other case, it would be brought to the county court.

It also provides that, the county court may make such orders as may be necessary to give effect to its determination of the appeal and that it may also make such incidental or consequential orders, as appear to it to be just.

### **Notification requirements**

#### **Clause 64:** Offenders subject to notification requirements

This clause provides that those subject to a VOPO, or an interim VOPO, will also be subject to notification requirements.

#### **Clause 65:** Notification requirements: initial notification

This clause sets out the information which a person must provide to police when he or she first makes a notification, and the timescales within which he or she is required to provide that information. The required information includes (but is not restricted to): the person's name; date of birth; home address; and national insurance number. Where the person is homeless, or has no fixed abode, they must notify an address, or location, where they can be regularly found.

Information must be provided to the police within three days of the main or interim VOPO coming into force. When determining the three day period, any time when a person is: remanded in, or is committed to, custody by an order of a court; serving a custodial sentence; detained in a hospital; or is outside the United Kingdom, is to be disregarded.

It also allows for the inclusion of additional information to be provided to the list of required information. This would be prescribed by regulations made by the Department (subject to the affirmative resolution procedure).

#### **Clause 66:** Notification requirements: changes

This clause stipulates that the person must notify police of any changes made to the information initially provided.. This must be done within a three day period from the date when the change occurs. It also allows the person to notify the police before a change to the information occurs. This advance notification must include the date when the change is expected to occur.

Changes to information includes: the use of a name not previously notified; a new home address; any premises in the United Kingdom where they have stayed for a qualifying period (and which has not already notified to the police); any change relating to the address of any other premises in the United Kingdom at which they regularly reside or stay; a

change to any other details prescribed by regulations made by the Department; and when they have been released from custody, or discharged from hospital detention.

A qualifying period is defined as a period of seven days, or two or more periods, in any twelve months, which taken together amount to seven days.

**Clause 67:** Notification requirements: periodic notification

This clause requires the person to re-notify information provided to police at initial notification, within a defined period.

Where no changes have been made by the person since their initial notification, they would be required to re-notify the required information annually effective from the date of their initial notification. However, where changes have been made to the information subsequently, the annual re-notification date would, instead, be effective from the date they notified information changes to police.

Where the effective date ends whilst the offender is: remanded in or committed to custody by an order of a court; serving a custodial sentence; detained in a hospital; or is outside the United Kingdom, they would be required to re-notify three days from their release, discharge, or return.

It also provides that those who do not have a sole or main residence in the United Kingdom may be subject to a different frequency of notification requirements. This would be prescribed by regulations made by the Department (subject to the affirmative resolution procedure).

This provision does not apply to those subject to an interim order.

**Clause 68:** Notification requirements: absence from notified residence

This clause requires the person to notify the police in advance, if they intend to leave their registered home address for more than three days to travel elsewhere in the United Kingdom, but where they are not intending to reside at another address which has been, or must be, notified under these provisions.

**Clause 64:** Notification requirements: travel outside the United Kingdom

This clause provides the Department with the ability to make regulations (subject to the affirmative resolution procedure), setting out notification requirements for those who wish to travel outside the United Kingdom.

The regulations would oblige such persons to notify certain details concerning their travel plans to the police.

**Clause 70:** Method of notification and related matters

This clause establishes how notification is to be made. It stipulates that the person must notify the police of the required information by attending a police station prescribed in regulations made by the Department under section 87(1)(a) of the Sexual Offences Act 2003. The information should be given orally and must be acknowledged by police in writing. It also allows police to take the person's fingerprints and photograph for verification purposes, as may be required.

It also provides that where the relevant fingerprints taken provide a complete and up to date set of fingerprints and are of better quality than those held for the offender under the Police and Criminal Evidence (Northern Ireland) Order 1989, those taken for the purpose of notification can be retained by police for the individual. The fingerprints of poorer quality must be destroyed.

It stipulates that photographs taken for notification purposes are destroyed once the offender ceases to be subject to notification requirements, but allows the Chief Constable to apply to the court for an extension of photograph retention for a period of two years, following the end of the notification period. The Chief Constable and the offender can appeal against a court order given to extend the period of retention, or a refusal by the court to make an order.

**Supplementary**

**Clause 71:** Offences

This clause sets out the penalties for failing to comply with the conditions of a VOPO or notification requirements. It stipulates that failure, without reasonable excuse, to comply with any prohibition or requirement of a full or interim VOPO, or any failure to comply with a notification requirement, without reasonable excuse, is an offence. It provides that those who knowingly provide false information on notification would also be committing an offence.

Where the person fails to comply with a notification requirement, the offence of failing to give a notification continues throughout the period during which the required notification is not given. An offender cannot be prosecuted more than once for the same failure.

The penalty for non-compliance is, on summary conviction, imprisonment for a period of up to six months, or a fine not exceeding the statutory maximum, or both. On conviction on indictment, the penalty is imprisonment for a period of up to five years, or a fine, or both.

**Clause 72:** Supply of information to relevant Northern Ireland departments or Secretary of State

This clause allows the Chief Constable to verify information provided by the individual in compliance with their notification requirements, to ensure that the information notified is correct and that no detail has been omitted. This will be done by comparing the details provided at notification against information provided by the person to certain bodies performing Government functions: a relevant Northern Ireland department, the Secretary of State, or a person providing services to a relevant Northern Ireland Government department or the Secretary of State.

It allows the Chief Constable to share the information for the purposes of the prevention, detection, investigation or prosecution of offences under this Part. The information may only be shared for the purpose of checking that the information supplied to the police is accurate and for the purpose of compiling a report of the comparison. This must be carried out in compliance with the Data Protection Act 1998.

**Clause 73:** Supply of information by relevant Northern Ireland departments or Secretary of State

This clause stipulates that a compiled information report may be provided to the police and that the police may retain and use the information solely for the purpose of prevention, detection, investigation or prosecution of offences.

It provides that the information provided to police by other Government Departments must be destroyed once the offender ceases to be subject to notification requirements, but allows the Chief Constable to apply for an order to extend the period of retention for a further two years from when the notification period ends.

The application to extend must be made within three months preceding the end of the notification requirement period. The Chief Constable and the offender can appeal against a court order to extend the period of retention, or a refusal by the court to make an order.

**Clause 74: Information about release or transfer**

This clause allows the Department to make regulations (subject to the negative resolution procedure), requiring those who are responsible for the individual while he is serving a custodial sentence or detained in a hospital, to notify other specified persons of the fact that they have become responsible for that individual, and of the time they are released from custody, or transferred to another institution.

The regulations would specify the person responsible and the person who must be notified.

**Clause 75: Power of entry and search of offender's home address**

This clause provides the police with a power of entry and search of a person's home address. The application must be made to the court by a police officer of the rank of superintendent or above. The court may issue a warrant authorising police to enter the premises for the purpose of risk assessment and to search the premises, if it is satisfied that the specified requirements are met.

The requirements are: that the address specified in the application is an address which was last notified to the police as their home address, or there are reasonable grounds to believe that the person lives there or may regularly be found there; that it is necessary for police to enter and search the premises for the purpose of risk assessing the individual; and that the police have, on at least two occasions, sought to enter the premises and had been unable to do so.

It also provides that police may use reasonable force, to enter and search the premises, if necessary. The warrant may authorise the police to enter and search the premises on more than one occasion, if the court is satisfied that it is necessary to do so. It also provides that the court, when considering the need for a search warrant, must be satisfied that it is proportionate in all circumstances for police to enter and search the premises in the case where the premises is resided in by a third party.

**Clause 76: Interpretation of this Part**

This clause sets out definitions for the purposes of Part 8.

## **Part 9: Miscellaneous**

This part contains miscellaneous provisions.

### **Jury Service**

#### **Clause 77: Removal of maximum age for jury service**

This clause abolishes the upper the age limit for jury service, making everyone over 18 qualified for jury service.

#### **Clause 78: Preparation of jury lists**

This clause removes the duty on the Chief Electoral Officer not to select for inclusion in divisional jury lists those electors whose names have been furnished by the Juries Officer as being disqualified, ineligible or excused.

#### **Clause 79: Persons disqualified for jury service**

This clause adds to the categories of persons disqualified for jury service persons who have received an indeterminate custodial sentence.

#### **Clause 80: Persons ineligible for jury service**

This clause updates the list of persons ineligible for jury service: paragraph (2) adds members and staff of the National Crime Agency; and paragraph (3) removes persons “appointed for the purposes of Article 7(6) of the Treatment of Offenders (NI) Order 1976” and members of the Royal Irish Regiment.

#### **Clause 81: Persons excusable as of right from jury service**

This clause updates the list of persons excusable from jury service as of right: paragraph (2) replaces “Representatives to the European Parliament” with “Members of the European Parliament”; paragraph (3) replaces “the Secretary and any Director of the Northern Ireland Audit Office” with “The Deputy Comptroller and Auditor General for Northern Ireland and any Assistant Auditor General for Northern Ireland”; and paragraph (4) replaces “persons aged between 65 and 70 years” with “persons aged over 70 years”.



## **Unpaid community service after early release**

### **Clause 82:** Unpaid community service after early release

This clause provides the Department with a power to introduce a community service scheme, having first consulted with the Probation Board for Northern Ireland. Under such a scheme a person released early from prison under the terms of the Conditional Early Release Scheme (as provided for by Article 19 of the Criminal Justice (NI) Order 2008) may be required to engage in unpaid community service from the time of their early release up until the time they were originally due to be released.

### **Personal samples, DNA profiles and fingerprints**

#### **Clause 83:** Power to take further fingerprints or non-intimate samples

This clause amends Article 61 and Article 63 of PACE to provide powers for police to take fingerprints or a non-intimate sample from persons without their consent, in cases where the investigation was discontinued but then resumed and the previous DNA sample, profile and fingerprints had been destroyed.

Consequential amendments to Schedule 2A of PACE, impose a time limit of six months from the resumption of the investigation for the sample and fingerprints to be retaken

#### **Clause 84:** Retention of material; persons convicted of an offence in England and Wales or Scotland

This clause will correct a gap identified in new Article 63G of PACE which makes provision for the retention of DNA and fingerprints taken from persons convicted of an offence outside Northern Ireland. As currently enacted, Article 63G would not permit the retention of the DNA profile and fingerprints taken from a person in Northern Ireland on the basis of a conviction recorded against the person for a recordable, non-qualifying offence in England, Scotland or Wales. New Article 63GA of PACE will ensure that DNA and fingerprints taken in Northern Ireland may be retained by virtue of the existence of a conviction in England, Scotland or Wales.

#### **Clause 85:** Retention of DNA profiles or fingerprints: persons given a prosecutorial fine

This clause makes provision for a DNA profile and fingerprints taken by police from a person who accepts a prosecutorial fine for an offence to be retained for a period of two years.

**Clause 86: Power to retain DNA profile or fingerprints in connection with different offence**

This clause substitutes a new Article 63N into PACE to provide that fingerprints or a DNA profile taken in connection with the investigation of one offence are to be treated as if they were taken in connection with the investigation of any other offence that the person is subsequently arrested for, charged with, convicted of or given a penalty notice for. This means that provisions in PACE for the retention of fingerprints or DNA profiles where there is a criminal conviction will apply in such cases, without the need for a causal link between the arrest in respect of which the fingerprints and DNA profiles were taken and the subsequent offence.

**Clause 87: Retention of personal samples that are or may be disclosable**

This clause amends Article 63R of PACE to insert a reference to Article 63P of PACE (which governs the retention of DNA samples) thereby making the retention rules for samples subject to the Criminal Procedure and Investigations Act 1996 (CPIA) in the same way as DNA profiles and fingerprints retained under Articles 63B to 63O and 63Q. The amendments provide that any sample retained under the CPIA must not be used other than for the purposes of any proceedings for the offence in connection with which it was taken and, that once the CPIA no longer applies, the sample must be destroyed

**Early Guilty Pleas**

**Clause 88: Sentencing court to indicate sentence which would have been imposed if guilty plea entered at earliest reasonable opportunity**

This clause requires a court, in certain circumstances when passing sentence, to indicate the sentence that it would have passed had the defendant entered a guilty plea at the earliest reasonable opportunity. This clause is intended to increase awareness of the availability of sentencing credit for an early plea and add some clarity around the level of credit that may be available in particular circumstances

**Sexual offences against children**

**Clause 89: Meeting a child following sexual grooming etc.**

This clause amends Article 22(1) (a) of the Sexual Offences (Northern Ireland) Order 2008 to reduce the number of times an adult has to have met, or communicated with a child, before meeting them, or travelling to meet them, from two occasions to one or more occasions. The provision does not apply retrospectively and is effective only from the date of commencement of this clause.

**Clause 90: Sexual communication with a child**

This clause introduces new section 22A into the Sexual Offences (Northern Ireland) Order 2008.

Section 22A provides that an adult person (18 years or over) commits an offence if they communicate sexually with a child under 16 years (or a child who the person committing the offence believes to be under 16 years) for the purpose of obtaining sexual gratification, or if they encourage the child to make a communication that is sexual, with them or someone else.

It defines a sexual communication as one which relates to sexual activity or where a reasonable person would consider it to be sexual. It defines sexual activity as an activity that a reasonable person would consider to be sexual.

Those found guilty of the offence would be liable to up to 6 months imprisonment, or a fine on summary conviction, or imprisonment of up to 2 years on indictment. Those guilty of the offence would also be subject to notification requirements under the terms of Part 2 of the Sexual Offences Act 2003.

**Avoiding delay in criminal proceedings**

**Clause 91: General duty to progress criminal proceedings**

This clause provides that in relation to criminal proceedings in the Crown Court or a magistrates' court, it is the duty of the court, the prosecution and the defence, to reach a just outcome as swiftly as possible.

**Clause 92: Case management regulations**

This clause confers a power on the department to make regulations about the management and conduct of criminal cases that may impose duties on: the court; the prosecution; and the defence. The clause also provides that the regulations may also confer functions on the court in relation to the "active management" of criminal cases and defines "active management" of cases in terms of the key responsibilities of a presiding judge.

## **Public Prosecutor's summons**

### **Clause 93: Public prosecutor's summons**

This clause enables a prosecutor from the Public Prosecution Service to issue a summons to an accused person without first having to get a lay magistrate to sign the summons, provided that a complaint has been made to a lay magistrate.

## **Defence access to premises**

### **Clause 94: Defence access to premises**

This clause introduces a power for a court, in criminal proceedings, to order access to specified premises for the defendant. The clause directs that an order will only be made where appropriate, and where it is required in connection with the preparation of the defendant's defence (or appeal), authorising entry into and inspection of the premises and any other specified activity on the premises or in relation to anything on them.

## **Court security officers**

### **Clause 95: Powers of court security officers**

This clause amends Schedule 3 to the Justice (Northern Ireland) Act 2004 (court security officers) by providing that the powers exercisable by a security officer in a relevant building (as defined in the said Act) also extend within the boundary of the land on which the building stands.

## **Causing or allowing child or vulnerable adult to suffer serious physical harm**

### **Clause 96: Causing or allowing child or vulnerable adult to suffer serious physical harm**

This clause amends Section 5 of the Domestic Violence, Crime and Victims Act 2004 (offence of causing or allowing the death of a child or vulnerable adult). The clause provides that in addition to causing or allowing death (under the current legislation) it will be an offence to cause or allow a child or vulnerable adult to suffer serious physical harm. The clause stipulates that a person found guilty of this offence is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine, or both.

## **Domestic violence protection notices and orders**

### **Clause 97: Domestic violence protection notices and orders.**

This clause gives effect to Schedule 7 of the Bill, which provides for the police and the courts to have the power to issue protection notices and orders aimed at ensuring the immediate protection of victims or potential victims of domestic violence.

## **Youth Justice**

### **Clause 98: Aims of youth justice system**

This clause inserts new wording in Section 53(3) of the Justice (NI) Act 2002, which compels all those working in the youth justice system to take account of the best interests of the children with whom they are working as a primary consideration.

### **Clause 99: Amendment to section 10 of the Criminal Justice Act (Northern Ireland) 2013**

This clause deletes sub-section 10.5 of the Criminal Justice Act (NI) 2013 and amends sub-sections (6) and (7) to only such extent as to maintain the integrity of the Section.

## **Salary of Lands Tribunal members**

### **Clause 100: Salary of Lands Tribunal members**

This clause removes the need for an increase in the salary of the member of the Lands Tribunal to be made by an affirmative resolution order and to align the arrangements for determining that salary with the non-Assembly procedure used to determine other judicial salaries.

## **Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

### **Clause 101: Amendment to Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015**

This clause amends sections 21(4)(a) and 21(11) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

Section 21(4) requires the Health and Social Care Board to make arrangements with a registered charity (within the meaning of the Charities Act (Northern Ireland) 2008) to

provide for an Independent Guardian to be appointed for a child who is a victim, or a potential victim, of human trafficking, or who is determined to be a separated child.

Clause 101 substitutes the term “registered charity” in section 21 (4)(a) with “charity” and inserts a new definition of “charity” in section 21(11). The amendment provides that, in addition to charities already registered under the Charities Act (Northern Ireland) 2008, charities waiting to be called forward to register under that Act and charities registered in either England and Wales or Scotland are eligible to be considered by the Health and Social Care Board to provide an independent guardian service in Northern Ireland.

### **Part 10: Supplementary Provisions**

This part contains the supplementary provisions including powers to make regulations.

#### **Clause 102: Regulations, orders and directions**

This clause provides that regulations and orders made by the Department may include such additional provisions as the Department considers necessary.

#### **Clause 103: Interpretation**

This clause contains interpretation provisions.

#### **Clause 104: Transitional provisions and savings**

This clause provides for transitional provisions and savings set out in Schedule 5 to have effect.

#### **Clause 105: Repeals**

This clause provides repeals set out in Schedule 6 to have effect.

#### **Clause 106: Commencement**

The clause concerns the commencement of the Bill and enables the Department to make Commencement Orders.

#### **Clause 107: Short title**

This clause provides a short title for the Bill.

## **Schedules**

### **Schedule 1: Amendments: single jurisdiction**

Schedule 1 of the Bill contains amendments consequential to the provisions on single jurisdiction.

### **Schedule 2: Amendments: direct committal for trial**

Schedule 2 of the Bill contains amendments consequential to the provisions on direct committal.

### **Schedule 3: Disclosure of Information: Victim and Witness Support Services and Victim Information Schemes**

Schedule 3 of the Bill contains provisions enabling the police and Public Prosecution Service to share relevant information with specified support service providers, the Department of Justice and the Probation Board for Northern Ireland. This will enable victims and witnesses to be informed about available support services and information schemes. The schedule also deals with the unauthorised sharing of information.

### **Schedule 4: Schedule inserted as Schedule 8A to the Police Act 1997**

Schedule 4 of the Bill inserts Schedule 8A into the Police Act 1997 to provide for a review mechanism as part of the filtering scheme operated by AccessNI.

### **Schedule 5: Amendments: criminal records**

Schedule 5 of the Bill contains amendments consequential to the provisions on criminal records.

### **Schedule 6: Amendments: serious physical harm to a child or vulnerable adult**

Schedule 6 of the Bill contains amendments consequential to the provisions on serious physical harm to a child or vulnerable adult.

### **Schedule 7: Domestic Violence Protection Notices and Orders**

Schedule 7 of the Bill contains provisions enabling the police with the power to issue a Domestic Violence Protection Notice (DVPN) and apply to the courts for a Domestic

Violence Protection Order (DVPO) for the purposes of protecting a victim of domestic violence where it has been assessed they may be at risk of immediate harm and danger.

The Schedule creates powers for the issue a DVPO; sets out the arrangements for breach of a notice; the application process for a DVPO; the conditions for and content of an order; what happens in the event of a breach of an order; and provisions for the remand of a person who breaches a notice or an order.

**Schedule 8: Transitional provisions and savings**

This schedule lists the transitional provisions and savings necessary to the Bill

**Schedule 9: Repeals**

This schedule lists the repeals brought in by the Bill

**FINANCIAL EFFECTS OF THE BILL**

108. In terms of costs and benefits, the Bill as a whole will primarily be delivered within existing resources, though some will form the basis of bids in the next spending review. It will however incur a number of costs but which will in themselves deliver considerable efficiency gains and larger scale savings.

**HUMAN RIGHTS ISSUES**

109. All proposals have been screened and are considered to be Convention compliant.

**EQUALITY IMPACT ASSESSMENT**

110. All but one of the constituent parts of the proposed Bill have been screened out as not having an adverse impact on any of the Section 75 categories in the Northern Ireland Act 1998.

111. The one exception was the proposal to remove the upper age limit for jury selection, where an equality impact assessment of the policy concluded that the policy would have a significantly disproportionate impact on people aged 70 and over, and consequently – because they are disproportionately represented in the over-70 age group – also on widowed people, disabled people, people without dependent children, and less so Protestants and women.



112. The Department concluded that these disproportionate impacts would not be necessarily adverse – while some older people would not welcome becoming eligible for jury service, others would view it as a very positive change.
113. A right to excusal will act as a mitigating measure – to allow those older people for whom jury service might cause stress or who would not consider themselves sufficiently fit to be excused automatically without any fuss and without any need to attend court.
114. The Department has committed to work with the main representative group for older people (the Age Sector Platform) to draw attention to eligibility changes and to review literature about jury service so as to ensure that the receipt of jury notices etc. by older people does not cause any undue stress or anxiety.

#### **SUMMARY OF THE REGULATORY IMPACT ASSESSMENT**

115. No direct costs will be created for the private or voluntary sectors alongside a more cost-effective service for the public. The change to eligibility for jury service should result in modest savings to employers in the private and voluntary sectors.

#### **LEGISLATIVE COMPETENCE**

116. The member in charge of the Bill, David Ford MLA, had made the following statement under Standing Order 30:

*“In my opinion the Justice Bill would be within the legislative competence of the Northern Ireland Assembly.”*

#### **SECRETARY OF STATE CONSENT**

117. A statement is required under section 8 of the Northern Ireland Act 1998, on Secretary of State consent:

*“The Secretary of State had consented under section 8 of the Northern Ireland Act 1998 to the Assembly considering this Bill.”*