



Research and Information Service Bill Paper

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Justice Bill 2014

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This paper outlines the provisions of the Justice Bill and policy proposals underpinning the Bill

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Key Points

The Justice Bill 2014 was introduced in the Northern Ireland Assembly on 16 June 2014 and had its second reading on 24 June 2014.

The Bill is divided into nine parts has 92 clauses and six schedules. Indications are that a number of planned amendments to the Bill. These include amendments made by the Department, the Attorney General and a Private Member's amendment.

It has three policy aims: to improve services for victims and witnesses; to speed up the justice system; and to improve the efficiency and effectiveness of key aspects the system.

Some issues were raised by consultees to the equality consultation on the Bill in 2013. These included:

- criticisms of the Department's approach to equality screening;
- the impact of proposals relating to the creation of a single jurisdiction for county courts and magistrates' groups on certain groups such as young and old people and persons with disabilities;
- concerns that the proposed amendment to Section 53 of the Justice (Northern Ireland) Act 2002 would not fully reflect the spirit of Article 3 of the UN Convention on the Rights of the Child;
- concerns that proposals to remove the maximum age for jury service would have a disproportionate impact on those over 70, including widowed, those with disabilities and women;
- concerns that the focus on encouraging early guilty pleas was on speeding up the criminal justice system and savings, putting the right to a fair trial at risk.

The Department concluded that it was satisfied that no substantial or equality issues remained unaddressed and that the proposals did not adversely impact on Section 75 groups.

The proposed provisions were broadly welcomed during the Second Stage Debate. However, there were some concerns around:

- proposed changes to the historical and traditional divisions of the county court;
- proposals on the single jurisdiction: whether they would benefit victims and witnesses or be operated to judicial or professional convenience;
- that a complete abolition of evidence on oath could cause delay and some issues could be dealt with at a preliminary investigation;

- that prosecutorial fines could be open to abuse and that a person only had to consent to a fine rather than actually pay the fine
- whether there is sufficient clarity regarding the role of the court in relation to early guilty pleas;
- whether some clauses in relation to early guilty pleas are necessary as there are already Court of Appeal Guidelines in place to set out the percentage rebate if someone pleads guilty;
- whether clauses relating to case management were necessary as there are arrangements in some courts to consider the readiness of criminal cases;
- whether the Department's proposals to amend Article 53 of the Justice (NI) Act 2002 on the aims of the Youth Justice system fully comply with Article 3 of the UN Convention on the Rights of the Child.

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1 Introduction

The Justice Bill 2014 was introduced by the Justice Minister, David Ford, in the Northern Ireland Assembly on 16th June 2014 and had its second reading on 24th June 2014. The Bill has 92 clauses, six schedules and is divided into 9 parts. The parts of the Bill relate to:

- Single Jurisdiction for County Courts and Magistrates Courts;
- Committal for Trial;
- Prosecutorial fines;
- Victims and Witnesses;
- Criminal Records;
- Live Links in Criminal Proceedings;
- Violent Offences Prevention Orders;
- Miscellaneous provisions including jury service, early guilty pleas, avoiding delay in criminal proceedings, Public Prosecutor's summons, Defence access to premises, court security officers and youth justice; and
- Supplementary provisions

The Bill has three main 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.¹

2 Consultations

The policies underpinning the Bill have been subject to consultation exercises. Full consultation exercises were conducted on:

- Committal reform;
- Encouraging early guilty pleas;
- The introduction of a statutory framework for the management of criminal cases;
- The introduction of a Victims and Witnesses Charter;
- The provision of Victim Personal Statements;
- Reform of the criminal records regime;

¹ See paragraph 3 of the Explanatory Memorandum to the Bill

- Expanding live video link opportunities in courts;
- The introduction of Violent Offences Prevention Orders;
- Changes to the upper age limits for juries.

Some of the policy areas were consulted on previously for inclusion in a prior Justice Bill. These included:

- The creation of a single court jurisdiction for the county courts and magistrates' courts;
- Powers for the PPS to issue summonses; and
- The creation of prosecutorial fines.

Some of the policy areas included in this Bill were the subject of targeted consultations, including amendments to update the Juries (Northern Ireland) Order 1996 and creating a power to inspect property in criminal cases.²

3 Part 1 of the Bill-Clauses 1-6: A Single Jurisdiction for County Courts and Magistrates' Courts

Background

Part one of this Bill creates a single territorial jurisdiction in Northern Ireland for the county courts and the magistrates' courts. According to the Explanatory Memorandum to the Bill, this is similar to that which already exists in the High Court, Crown Court and Coroners Service. The rationale for this approach is to allow for greater flexibility in the distribution of court business by allowing cases to be listed in or transferred to an alternative court division, when there is a good reason to do so.³

Historically, Northern Ireland has been divided into County Court Divisions and Petty Sessions (Magistrates' Courts) districts based on the boundaries for Local Government Districts (LGDs).⁴ In light of the reduction in the number of LGD from 26 to 11, the Northern Ireland Courts and Tribunal Service (NICTS) established a working group to consider the options for redesigning court boundaries.⁵ At the time, the working group considered two main options:⁶

² See paragraph 10 of the Explanatory Memorandum to the Bill

³ See paragraph 72 of the Explanatory Memorandum to the Bill

⁴ Northern Ireland Court Service "Redrawing the Map: A Consultation on Court Boundaries in Northern Ireland" March 2010, pg 2

⁵ Northern Ireland Court Service "Redrawing the Map: A Consultation on Court Boundaries in Northern Ireland" March 2010, pg 2

⁶ Northern Ireland Court Service "Redrawing the Map: A Consultation on Court Boundaries in Northern Ireland" March 2010, pg 2

- Option 1- A conventional realignment of court boundaries to take account of the LGDs
- Option 2-Removal of statutory boundaries to establish a single territorial jurisdiction for County Courts and Magistrates' Courts in Northern Ireland. This model would be underpinned by an administrative framework governing the distribution of business.

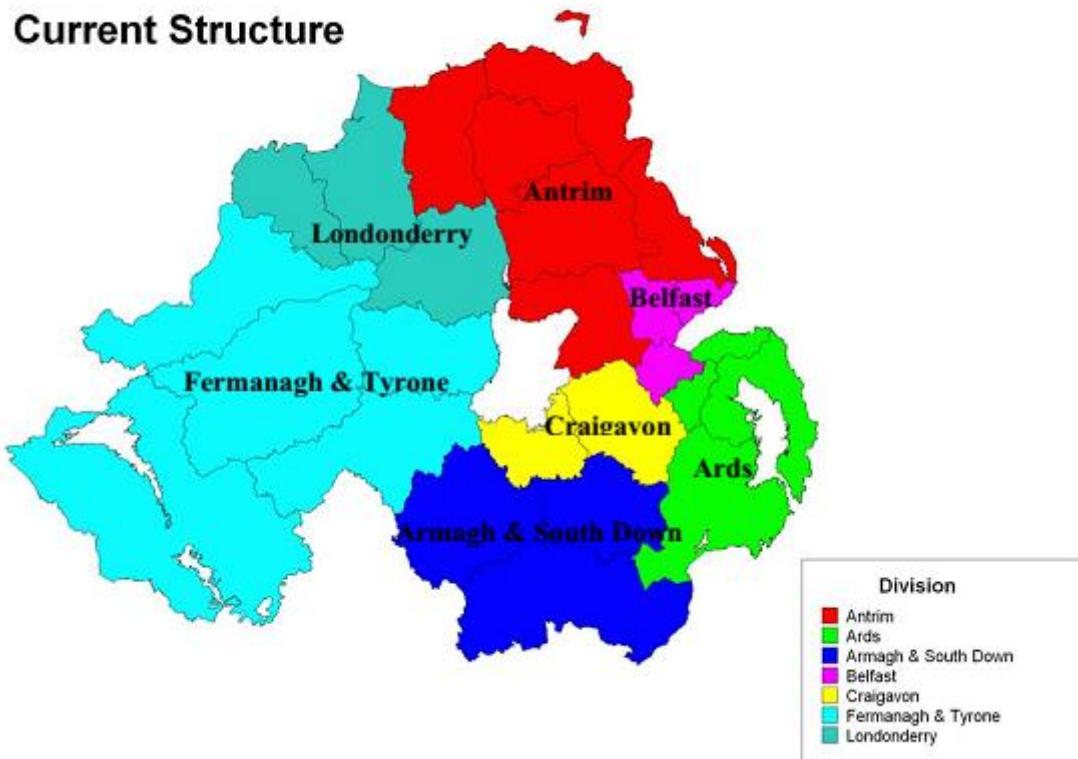
Overview of Clauses

Clause 1 creates a Single Jurisdiction for County Courts and Magistrates' Courts and provides 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 deals with administrative court divisions. Clause 2(1) confers a power on the Department of Justice, after consultation with the Lord Chief Justice, to make directions which will divide Northern Ireland into areas to be known as administrative court divisions. Clause 2 (2) provides that the directions may specify different administrative court divisions for different purposes of the same court.

There is little detail in the Bill and accompanying Explanatory Memorandum on the possible divisions. However, a consultation exercise conducted in 2010, "Redrawing the Map- A Consultation on Court Boundaries", provides further information on this matter. The map below, taken from the NICTS consultation document, sets out the current Divisional structure.⁷

⁷ Northern Ireland Court Service "Redrawing the Map"- A Consultation on Court Boundaries in Northern Ireland , March 2010 Pg 6.

Map 1: Current structure

The consultation paper in 2010 contains an appendix which provides a description of the various court divisions. The paper highlighted that during the first phase of the reforms it is proposed to preserve the links between court boundaries and local government boundaries, pre or post RPA reform. Appendix (version 1) of the consultation paper lists the current 7 court division structure, but the consultation paper suggested that this option would maintain the status quo, but it would lead to confusion post RPA reform.⁸

⁸ Northern Ireland Court Service "Redrawing the Map"- A Consultation on Court Boundaries in Northern Ireland , March 2010, pg39

Appendix version 1

Appendix (version 1)

Court division	Current Petty Sessions Districts <i>(to be combined so only one per division)</i>	Current Local Government Districts	Courthouses
Antrim	North Antrim	Coleraine Ballymoney Moyle	Coleraine
	Ballymena	Ballymena	Ballymena
	Antrim	Antrim	Antrim
	Larne	Larne	Larne
Ards	Down	Down	Downpatrick
	Castlereagh	Castlereagh	
	Ards	Ards	Newtownards
	North Down	North Down	Bangor
Armagh and South Down	Armagh	Armagh	Armagh
	Newry and Mourne	Newry and Mourne	Newry
	Banbridge	Banbridge	Banbridge
Belfast	Belfast	Belfast Newtownabbey Carrickfergus	RCJ Laganside Old Townhall
Craigavon	Craigavon	Craigavon	Craigavon
	Lisburn	Lisburn	Lisburn
Fermanagh and Tyrone	East Tyrone	Cookstown Dungannon	Dungannon
	Omagh	Omagh	Omagh
	Strabane	Strabane	Strabane
	Fermanagh	Fermanagh	Enniskillen
	Londonderry	Derry	Londonderry
Londonderry	Limavady	Limavady	Limavady
	Magherafelt	Magherafelt	Magherafelt

The consultation paper sets out information on Appendix version 2 (see below) which comprises of 6 court divisions, each of which comprises of 1 or more of the eleven proposed Local Government Districts. The paper indicated that this model (**shown below in Appendix version 2 and Map 2**) would provide the most even distribution of workload across Northern Ireland.⁹

⁹ Northern Ireland Court Service "Redrawing the Map"- A Consultation on Court Boundaries in Northern Ireland , March 2010, pg 40

Appendix Version 2

Court division	Comprises the following Local Government Districts (post R.P.A.)	<i>Current council areas included within Division (For illustration only)</i>	<i>Courthouses (For illustration only)</i>
Antrim	<ul style="list-style-type: none"> • Antrim and Newtownabbey; • Mid-Antrim. 	<i>Antrim</i> <i>Newtownabbey</i> <i>Ballymena</i> <i>Carrickfergus</i> <i>Larne</i>	<i>Antrim</i> <i>Ballymena</i> <i>Larne</i>
Ards and Lisburn	<ul style="list-style-type: none"> • Lisburn City and Castlereagh; • Ards and North Down. 	<i>Lisburn</i> <i>Castlereagh</i> <i>Ards</i> <i>North Down</i>	<i>Newtownards</i> <i>Lisburn</i> <i>Bangor</i>
Armagh and South Down	<ul style="list-style-type: none"> • Armagh City and Bann; • Newry City and Down. 	<i>Armagh</i> <i>Banbridge</i> <i>Craigavon</i> <i>Newry and Mourne</i> <i>Down</i>	<i>Newry</i> <i>Armagh</i> <i>Downpatrick</i> <i>Craigavon</i> <i>Banbridge</i>
Belfast	<ul style="list-style-type: none"> • Belfast City. 	<i>Belfast City</i>	<i>Laganside</i> <i>Old Townhall</i>
Western	<ul style="list-style-type: none"> • Fermanagh and Omagh; • Mid-Ulster. 	<i>Fermanagh</i> <i>Omagh</i> <i>Cookstown</i> <i>Dungannon</i> <i>Magherafelt</i>	<i>Dungannon</i> <i>Omagh</i> <i>Enniskillen</i> <i>Magherafelt</i>
Northern	<ul style="list-style-type: none"> • Derry City and Strabane; • Causeway Coast. 	<i>Derry City</i> <i>Strabane</i> <i>Ballymoney</i> <i>Coleraine</i> <i>Limavady</i> <i>Moyle</i>	<i>Londonderry</i> <i>Coleraine</i> <i>Strabane</i> <i>Limavady</i>

Map 2: Proposed Court Divisions



Clause 3 (1) of the Bill confers a power on the Lord Chief Justice to give directions as to the distribution of business of county courts among the county courts and magistrates' courts and for the transfer of business from one court to another. Clause 3 (4) also confers a power on the Department of Justice to give directions as to the distribution among the chief clerks and clerks of the petty sessions of the functions exercisable conferred by any statutory provision on them. This approach diverges from the initial policy thinking in the NICTS policy consultation. The consultation document in 2010 suggested that the responsibility for the administrative framework for issuing the proposed administrative framework could be issued by the Department of Justice with the agreement of the Lord Chief Justice or vice versa.¹⁰

In the summary of responses to the consultation paper, the NICTS indicated that having reviewed the options and considered the consultation responses, its view was that the function was one of judicial deployment and distribution of court business and it should be exercised by the Lord Chief Justice with the agreement of the Department of Justice.¹¹ The NICTS suggested it would be helpful to provide that the Department of Justice may make a recommendation to the Lord Chief Justice that the administrative framework should be amended.¹² However, the Bill contains separate direction making

¹⁰ Northern Ireland Court Service "Redrawing the Map"- A Consultation on Court Boundaries in Northern Ireland , March 2010,pg 15

¹¹ Northern Ireland Courts and Tribunals Service- "Redrawing the Map"- A Consultation on Court Boundaries in Northern Ireland"- Summary of Responses and Proposed Way Forward",1 October 2010, pg11

¹² Northern Ireland Courts and Tribunals Service- "Redrawing the Map"- A Consultation on Court Boundaries in Northern Ireland"- Summary of Responses and Proposed Way Forward",1 October 2010, pg11

powers for the Lord Chief Justice and the Department and neither has exclusive responsibility for the administrative framework.

Clause 4 deals with lay magistrates. According to the Explanatory Memorandum, this clause re-enacts section 9 of the Justice (Northern Ireland) Act 2002 with amendments so that lay magistrates will have jurisdiction throughout Northern Ireland and will be appointed to an administrative court division.¹³ Clause 4 (1) of the Bill provides that the Northern Ireland Judicial Appointments Commission must appoint persons to be lay magistrates. Clause 4 (2) provides that a lay magistrate shall be appointed to an administrative court division and will have jurisdiction throughout Northern Ireland. Clause 4 also provides that a lay magistrate shall sit in accordance with directions given by the Lord Chief Justice. In giving such directions, the Lord Chief Justice is to have regard to the desirability of a lay magistrate sitting in courts held in reasonable proximity to where the lay magistrate lives or works. Clause 4 (7) confers a power on the Department of Justice, after consultation with the Lord Chief Justice, to make further provision by order about eligibility for appointment as a lay magistrate. The order may include provision that a person may not be eligible for appointment if they do not live or work within a prescribed distance of the administrative court division for which they are to be appointed. An order made under clause 4 (7) of the Bill may not be made unless a draft has been laid before and approved by a resolution of the Assembly (see clause 87 (7) (a)).

Clause 5 deals with 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.¹⁴ Clause 5(3) provides that a justice of the peace shall have as regards the whole of Northern Ireland the jurisdictions and duties which immediately before commencement were vested in or imposed on a justice of the peace as regards a county court division. Clause 5(5) requires the Department of Justice to make arrangements for keeping a copy of any instrument appointing or removing a justice of the peace and keeping a record and persons holding office as a justice of the peace.

Clause 6 provides for the consequential amendments contained in schedule 1 to have effect. Schedule 1 of the Bill amends various pieces of legislation as a result of the provisions in this part of the Bill.

¹³ Explanatory Memorandum to the Bill, pg 23.

¹⁴ Explanatory Memorandum to the Bill, pg 24

4 Part 2 of the Bill-Clauses 7-16: Committal for Trial

Background

Part 2 of the Bill relates to committal for trial. It is divided into two chapters: abolition of preliminary investigations and direct committal for trial in certain cases. A committal hearing is a preliminary hearing to determine whether there is a case to answer in the Crown Court.¹⁵ In Northern Ireland, there are two forms of committal proceedings. The first type and most commonly used form of committal proceedings is a ‘Preliminary Inquiry’ (PE). A PE is governed by Articles 31- 34 of the Magistrates’ Court (Northern Ireland) Order 1981. Where a prosecutor intends to carry out a PE, they must serve a notice of intention to the Magistrates’ Court to hold a PE along with the necessary documentation including a list of witnesses, the statement of complaint and a list of exhibits.¹⁶ Copies of witnesses’ written statements are presented to the court and, if either side requests, read out loud. This process avoids the necessity for witnesses having to attend court on two separate occasions to give evidence.¹⁷

The other type of committal proceedings is a ‘preliminary investigation’ (PI). A PI is conducted by oral evidence before a magistrate’s court.¹⁸ PI evidence is given by word of mouth on oath, it is written down in court and called a deposition. The witnesses are bound over to attend and give evidence if required at the main trial.¹⁹

The Criminal Justice System Review Report, published in 2000, noted that in the Scottish criminal justice system the committal process does not involve any form of a preliminary hearing. Instead the Procurator Fiscal exercises a quasi-judicial function in assessing whether there is sufficient evidence to secure a conviction if charged.²⁰ The Review also considered the system in England and Wales where there was a trend towards simplified procedures for transferring cases to the Crown Court. The Review recommended that consideration be given to introducing simplified procedures for transferring cases to the Crown Court in Northern Ireland, whilst ensuring safeguards for a defendant who wishes to argue that there is no case to answer.²¹

The Department of Justice consulted on proposals for reform of committal proceedings in January 2012. The consultation sought views on a proposal to remove the taking of oral evidence and cross examination of witnesses in committal proceedings. The defendant would retain the right to make representations on his/her own behalf, but it would not be possible to take oral evidence from other witnesses. All committal proceedings would take place by way for preliminary inquiry or ‘on the papers’. The document also proposed that cases involving the Justice and Security (Northern

¹⁵ NIO (2004) *The Future of Committal Proceedings*, published April 2004, p 5

¹⁶ BJAC Valentine (2010) “Criminal Procedure in Northern Ireland” 2nd Edition, 157

¹⁷ B Dickson 2011 “Law in Northern Ireland: An Introduction” SLS Publications, 201

¹⁸ BJAC Valentine (2010) “Criminal Procedure in Northern Ireland” Second Edition, 155

¹⁹ B Dickson 2011 “Law in Northern Ireland: An Introduction” SLS Publications, 201

²⁰ Criminal Justice System Review Report, March 2000,

²¹ Criminal Justice System Review Report, March 2000, pg 89

Ireland) Act 2007 and cases involving extra territorial offences would be conducted as PE, or on the papers. The Department also welcomed views and comments on potential further reform, including extending the range of cases that could be transferred directly for trial to the Crown Court or alternatively, a magistrates' court could potentially be required to directly transfer a case to the Crown Court without any committal proceedings.²²

There were issues raised in response to the Department of Justice's policy consultation on committal reform. Eleven respondents made substantive comments on the proposal to abolish PIs and mixed committals. Of these responses, eight were in favour and three were opposed. Four of those who supported the proposal (PSNI, PPS, NIACRO and Victim Support) commented that existing arrangements can contribute to delay, be traumatic for victims and witnesses and place an unnecessary burden on the criminal justice system.²³

The Law Society, Belfast Solicitors' Association and an individual considered that the proposal failed to consider the impact on the defendant and that it could be damaging to the criminal justice system. The respondents said that the proposal failed to recognise that committal proceedings could ensure efficiency and enable weak cases to be weeded out at an early stage.²⁴

The Law Society and Solicitors' Association suggested that instead of constraining the right to examine witnesses in committal proceedings, the Department should consider the use of special measures to address the needs of vulnerable and intimidated witnesses. One individual suggested that committal proceedings were not the prime cause of delay and suggested other measures including embedding PPS prosecutors in PSNI stations, the direct transfer of serious indictable cases from the magistrates' court to the Crown Court and quicker provision of case papers and forensic and medical reports.²⁵

Five respondents (the Northern Ireland Legal Services Commission, PSNI, NIACRO, PPS and Office of the Lord Chief Justice (OLCJ)) agreed that the proposals should be extended to cases brought under the Justice and Security (Northern Ireland) Act 2007 and cases involving extra-territorial offences.²⁶

²² DoJNI "Reform of Committal Proceedings: A Department of Justice Consultation" January 2012, available at http://www.dojni.gov.uk/index/public-consultations/archive-consultations speeding_up_justice_consultation_on_reform_of_committal_proceedings.pdf

²³ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward" pg 24 <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/early-guilty-pleas-and-committal-reform-report-on-responses-and-way-forward-report.pdf>

²⁴ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward" pg 24

²⁵ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward" pg 24

²⁶ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward" pg 25

Six respondents suggested there was benefit in making more fundamental reform to the committal process and in particular suggested the introduction of a more direct route from the magistrates' court to the Crown Court to get an accused to trial more quickly on cases being tried on indictment. The OLCJ suggested that committal should be abolished for cases where the defendant wished to enter a guilty plea in the magistrates' court and to allow transfer to court for sentencing.²⁷

PSNI, PPS, Victim Support and an individual asked the Department to consider the scope for direct transfer for all cases to be tried on indictment without retaining any vestige of committal. NIACRO suggested there was an opportunity for direct transfer provided the right of the accused to challenge evidence is retained and that any decision to transfer a case directly to the Crown Court is made known to the accused and the injured party, along with the expected timeframe for the case to come before the court.²⁸

The Department responded that the case for abolition of the right to call oral evidence and cross examine witnesses at committal proceedings has been made and that the proposal should be extended to cases brought under the Justice and Security (Northern Ireland) Act 2007 and extra-territorial cases. The Department also concluded that now was the opportunity for wider committal reform and indicated its intention to establish a Procedural Reform Group to develop proposals for more radical committal reform, to enable the transfer from the magistrates' court to the Crown Court in certain circumstances, for example where the defendant indicated that they wished to plead guilty.²⁹

Overview of Clauses

Chapter 1- Abolition of Preliminary Investigations

Clause 7 of the Bill abolishes preliminary investigations by repealing Article 30 of the Magistrates' Courts (Northern Ireland) Order 1981. As a result, all committal proceedings in the magistrates' courts will be dealt with by preliminary inquiry.

Clause 8 repeals Article 34(2) of the Magistrates' Courts Northern Ireland Order 1981 which means that there will no longer be a requirement for witnesses at a Preliminary Inquiry to give evidence on oath.

Clause 9 gives effect to Schedule 2 of the Bill which contains consequential amendments as a result of section 7 and 8.

²⁷ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward"

pg 26

²⁸ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward"

pg 26

²⁹ DoJNI "Encouraging Early Guilty Pleas and Reform of Committal Proceedings: Report on responses and Way Forward"

pg 27

Chapter 2- Direct Committal for Trial in Certain Cases

Chapter 2 provides for the direct committal to the Crown court for trial in certain cases. Clause 10 (1) provides that the direct transfer provisions in this chapter apply where an accused person appears or is brought before a magistrates' court charged with an offence and certain conditions set out in subsection 2 are satisfied. The conditions are that the offence is an offence triable only on indictment or it is a summary offence but either the accused or the prosecution claims to be tried on indictment; or it is determined that the offence is to be tried on indictment.

Clause 10 (3) specifies that the provisions in the chapter do not apply for example where a notice has been issued to transfer proceedings in serious fraud cases or cases involving children to the Crown Court.

Clause 11 makes provisions for direct committal to the Crown Court for trial where the accused indicates an intention to plead guilty to an offence and therefore shall not conduct committal proceedings.

Clause 12 makes provision for direct committal to the Crown Court for trial where an accused is charged with a specified offence and committal proceedings will therefore not be conducted in relation to that offence. Specified offences are set out in clause 12(3) and include murder and manslaughter and offences of aiding, abetting, counselling, procuring, inciting the commission, conspiring or attempting to commit murder or manslaughter. Clause 12 (4) allows the Department of Justice to amend subsection 3 by order. This would allow the Department to add to the list of specified offences which could be directly committed to the Crown Court. An order made under clause 12(4) may not be made unless a draft has been laid before and approved by a resolution of the Assembly (see clause 87 (7) (a)).

Clause 13 sets out the procedures that have to be followed in relation to direct committal. The Court when committing a person for trial to the Crown Court shall specify in a notice the charges on which the person is to be committed for trial and the place where the person is to be tried. Clause 13 (2) provides that magistrates' courts rules have to make provision for the service of documents, including that a copy of the notice of committal and copies of documents containing evidence have to be given to the person and to the Crown Court. The documents containing evidence are to be given to the person and the court either at the same time as the notice of committal or as soon as practicable thereafter. Magistrates' courts rules are made by the Magistrates' Courts Rules Committee and are subject to the negative resolution procedure of the Assembly.³⁰

Clause 14 makes provision for the procedures to be followed after committal. The clause provides that a person who is committed for trial may apply orally or in writing to the Crown Court for the charge or any of the charges to be dismissed. The application

³⁰ See Articles 13 and 13A (2) of the Magistrates' Courts (Northern Ireland) Order 1981.

can be made any time after that person is served with copies containing the evidence on which the person is charged and before that person is arraigned. The judge shall dismiss the charge if it appears that the evidence would not be sufficient for the applicant to be convicted. Clause 14(7) allows Crown Court rules to be made which may make provision as to the time and stage of proceedings at which anything required to be done is to be done and may prescribe the content and form of other notices or documents, the manner in which the material is submitted and the persons to be served with notices and other material. Crown Court rules are made by the Crown Court Rules Committee and are subject to negative resolution of the Assembly.³¹

Clause 15 provides for restrictions on reporting applications for dismissal. Subsection 1 provides that no written report of an application shall be published in Northern Ireland and no report of such an application shall be included in a relevant programme for reception in Northern Ireland. Relevant programme means a programme included in a programme service within the meaning of the Broadcasting Act 1990. According to subsection 4, subsection 1 does not apply where the application is successful. Subsection 6 provides that subsection 1 does not apply to the publication of a report or a relevant programme of a report of an unsuccessful application. Subsection 7 specifies that subsection 1 does not apply to a report that contains one or more of the following matters:

- The identity of the court and the name of the judge;
- The names, ages, home addresses and occupations of the accused and witnesses;
- The offence or offences, or a summary of them which the accused is or are charged;
- The names of counsel and solicitors in the proceedings;
- Where the proceedings are adjourned, the date and place to which they are adjourned;
- Any bail arrangements; and
- Whether legal aid was granted to the accused or any of the accused.

Subsection 10 of clause 15 provides that if a report is published or broadcast in contravention of the section, that specified persons are guilty of an offence. The provision includes proprietors, editors or publishers of a newspaper or periodicals or a body corporate engaged in providing a service in which the programme is included. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale (subsection 11). Level 5 on the standard scale is £5000.³²

³¹ See Articles 52(1), 53A and 119 of the Judicature (Northern Ireland) Act 1978

³² Article 5 (2) of the Fines and Penalties (Northern Ireland) Order 1984, as amended by Article 3 of the Criminal Justice (Northern Ireland) Order 1994.

Clause 16 provides that schedule 3, which contains amendments consequential to the provisions on direct committal, has effect and makes further supplementary provision.

5 Part 3 of the Bill- Clause 17-27: Prosecutorial Fines

Background

Part 3 of the Bill creates new powers to allow public prosecutors to offer lower level offenders a financial penalty up to a maximum of £200 as an alternative to prosecution of the case at court.³³ The Criminal Justice System Review published in 2000 recommended that prosecutorial fines be considered in Northern Ireland. The Criminal Justice Review noted that it could be argued that prosecutorial fines involve imposing punishment or putting pressure on a suspect to accept punishment without recourse to due process. However, the Review indicated there were no objections on human rights grounds, if it were made clear that in issuing a fine the recipient has the option of contesting the case in court.³⁴

The policy proposals were the subject of a consultation conducted by the Northern Ireland Office (NIO) in 2008 prior to the devolution of policing and justice to the Northern Ireland Assembly and the establishment of the Department of Justice.³⁵ A paper outlining the summary of responses to the consultation was published in October 2009. The majority of respondents were in favour of diverting suitable first time and non-habitual offenders committing minor offences from prosecution and providing alternative non court disposals which represented a proportionate justice outcome. The NIO signalled its intention to begin drafting legislation for the introduction of prosecutorial fines. The NIO set out the circumstances when prosecutorial fines would be available and these are rehearsed as follows:³⁶

- Prosecutorial fines would be available to the prosecutor to exercise in any summary offence in which it is believed that it would be an appropriate and proportionate response;
- No designated list of offences is proposed and it would be for the prosecutor subject to strict internal guidelines to consider its appropriateness as a disposal in individual cases;
- The recipient would be required to admit the offence and consent to receiving a prosecutorial fine;

³³ Explanatory Memorandum to the Bill, pg 26.

³⁴ Criminal Justice System Review Report, March 2000, para 4.154,available at <http://cain.ulst.ac.uk/issues/law/cjr/chap4.pdf>

³⁵ NIO "Alternatives to Prosecution" March 2008, pg 28

http://webarchive.nationalarchives.gov.uk/20091013044625/http://www.nio.gov.uk/alternatives_to_prosecution_-_a_discussion_paper.pdf

³⁶ NIO "Summary of Responses to the Alternatives to Prosecution: A Discussion Paper" October 2009

- The fine would not be recorded on an individual's criminal record but it may be taken into account by the PPS and courts if further offences are committed in the future;
- Have a variable, rather than a fixed fine value. The Prosecutor would consider the appropriate rate based on the level of court fine the offence would attract;
- The fine would have the ability to attract a compensation order to recompense victims for the value of the criminal damage costs incurred and the recipient would be offered the ability to pay by instalments based on means assessment.

Overview of Clauses

Clause 17 of the Bill allows the Public Prosecutor to issue a notice offering an alleged offender aged over 18 a prosecutorial fine notice where the Public Prosecutor receives a report that a summary offence has been committed. Clause 17 also specifies that the notice must contain particular information such as stating the alleged offence or offences, information on the circumstances alleged to constitute the offence or offences, the amount of the prosecutorial fine to be paid. The notice must also specify that the alleged offender may accept or decline the offer given by the Public Prosecutor within 21 days of the date that the notice was issued and if the offer is declined that the alleged offender is liable to be prosecuted for the offence. The notice must also indicate that if the offer is accepted that the alleged offender will be discharged from liability to be prosecuted.

Clause 18 provides that where a person has accepted the offer under clause 17, the Public Prosecutor must issue a prosecutorial fine notice to that person. A prosecutorial fine notice is notice which states the alleged offence, the amount of prosecutorial fine and how the payment may be made. The period allowed for payment of a prosecutorial fine is the period of 28 days beginning with the date the fine notice was issued.

Clause 19 sets out that the amount of prosecutorial fine is the amount the Public Prosecutor determines appropriate having regard to the circumstance of the offence and a £10 offender levy. Clause 19(4) provides that in a criminal damage offence, the Public Prosecutor may also order an amount of compensation a person in respect of damage to their property as a result of the offence or offences. Clause 19 (5) provides that the prosecutorial fine may not exceed the amount for the time being of level 1 on the standard scale. Level 1 on the standard scale is currently £200.³⁷

Clause 20 places restrictions on prosecutions. Proceedings may not be brought against the alleged offender for the offence within 21 days of the notice being issued. If the offer in a notice is accepted, no proceedings may be brought for the offence set out in the notice. The Explanatory Memorandum says that clause 20 provides that if the

³⁷ Article 5 (2) of the Fines and Penalties (Northern Ireland) Order 1984, as amended by Article 3 of the Criminal Justice (Northern Ireland) Order 1994

prosecutorial fine is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.

Clause 21 deals with the arrangements for payment of prosecutorial fines. According to clause 21(4), sums paid by way of prosecutorial fines for an offence are treated as if they were fines imposed by summary conviction of that offence. The Explanatory Memorandum explains that this allows the use of existing court fine recovery and compensation payment systems.³⁸

Clause 22 deals with failure to pay a prosecutorial fine within the 28 day period allowed for payment. Where there has been a failure to pay the fine, the enhanced sum is one and half times the amount determined by the Public Prosecutor and the total amount is registered for enforcement as a court fine. The prosecutorial fine and the offender levy are enhanced. However, compensation relating to criminal damage is not increased.

Clause 23 allows the Director of Public Prosecutions to issue a registration certificate in respect of sums payable in default stating that the sum is registrable under section 24 for enforcement against the defaulter as a fine.

Clause 24 provides that where the fines clerk receives a registration certificate in respect of defaulted sums, the clerk must register that sum for enforcement as a fine. Clause 24 provides a delegated power for the Department may make regulations with respect to the enforcement of payment of sums. These regulations are subject to the negative procedure under clause 87 of this Bill.

Clause 25 enables a person to challenge the issue of a prosecutorial fine on the grounds of mistaken identity.. This clause allows a person who has received a notice for the registration of a sum under clause 24 for enforcement to challenge by making a statutory declaration that they were not the person to whom the relevant prosecutorial notice was issued. This

Clause 26 allows the court to set aside a sum enforceable as a fine in the interests of justice. Where the court sets aside such a sum, the prosecutorial fine notice, the registration or proceedings taken for enforcing a payment of fine are void and no further action is to be taken in respect of the offence occurred.

Clause 27 defines a number of terms in Part 3 of the Bill including fines clerk, period allowed for payment, prosecutorial fine notice, public prosecutor and registration certificate.

³⁸ Explanatory Memorandum to the Bill, pg 27.

6 Part 4 of the Bill- Clause 28-35 The Victim Charter and Witness Charter

Background

Part 4 of the Bill establishes statutory Victim and Witness Charters and provides a statutory entitlement for a victim to be afforded the opportunity to make a personal statement.

The Assembly's Justice Committee published a report of its inquiry on *Criminal Justice Services available to Victims and Witnesses of Crime in Northern Ireland* in June 2012. The report made a number of recommendations to improve the experience of victims and witnesses in the criminal justice system. In relation to the provisions contained within this Bill, the Committee strongly recommended the introduction of a Victim and Witness Charter with statutory entitlements in terms of information provision and treatment.³⁹ According to the report, the Charter should cover the following minimum entitlements:⁴⁰

- Be treated with dignity and respect;
- Receive information on the progress of their case and the reasons for any delay at identified key milestones in accordance with timescales set out in the Code of Practice;
- Be informed about the outcome of their case in accordance with timescales set out in the Code of Practice;
- Be given the reasons for the decision not to prosecute in accordance with timescales set out in the Code of Practice;
- Be provided with additional support if they are vulnerable or intimidated;
- Receive information on the offender's release from custody and arrangements for their supervision in the community in accordance with timescales set out in the Code of Practice;
- Complain to an independent body if not satisfied with how an organisation has dealt with their concerns.

The Committee's report considered that it was important that victims of serious crime have an opportunity to relate during criminal proceedings the impact that a crime has

³⁹ Committee for Justice "Report on the Committee's Inquiry into the Criminal Justice Services available to Victims and Witnesses of Crime in Northern Ireland" NIA 31/11-15, pg 45, available at <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Reports/>

⁴⁰ Committee for Justice "Report on the Committee's Inquiry into the Criminal Justice Services available to Victims and Witnesses of Crime in Northern Ireland" NIA 31/11-15, pg 45

had on them and for account to be taken of this impact. The Committee recommended that a formal system of completion and use of Victim Impact Statements and Reports should be introduced as a matter of urgency and that there should be an automatic right for Victim Impact Statements to be completed in all cases involving serious crime.⁴¹

The Department of Justice consulted on its draft Five Year Victim and Witness Strategy in October 2012. The consultation document included five main themes: the status and treatment of victims and witnesses; communication and information provision; support provisions and special measures; participation and improved understanding; and collation and information.⁴² Elements of the strategy included the introduction of statutory Victim's Charter and a Witness Charter and the statutory entitlement to make Victim Impact Statements.⁴³ Consultation on the draft Charter sets out the services to be provided to victims of criminal conduct in Northern Ireland by a range of service providers. The draft Charter sets out the entitlement and standards of services victims can expect to receive.⁴⁴

Proposals regarding Victim Statements and the Victim's Charter were welcomed by the Northern Ireland Human Rights Commission (NIHRC) in its response to the Department of Justice public consultation on "Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime."⁴⁵ The NIHRC welcomed the proposals with respect to Victim Impact Statements as, in its view, they were broadly consistent with paragraph 6 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power which states:⁴⁶

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:...(b) allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected without prejudice to the accused and consistent with the national criminal justice system.

The NIHRC also noted the proposals that the Victim Charter would include an entitlement to reasons for any delay and to reasons for a decision not to prosecute. The NIHRC indicated that these measures would go some way to ensuring compliance

⁴¹ Committee for Justice "Report on the Committee's Inquiry into the Criminal Justice Services available to Victims and Witnesses of Crime in Northern Ireland" NIA 31/11-15, pg 52

⁴² DOJNI "Making a Difference; Improving Access to Justice for Victims and Witnesses of Crime: A Five Year Strategy" October 2012, <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/making-a-difference-improving-access-to-justice-for-victims-and-witnesses-of-crime.htm>

⁴³ DOJNI "Making a Difference; Improving Access to Justice for Victims and Witnesses of Crime: A Five Year Strategy" October 2012, pg 5.

⁴⁴ DDoJNI "Draft Victim Charter" http://www.dojni.gov.uk/index/public-consultations/current-consultations/victim_charter_may_2014.pdf

⁴⁵ <http://www.nihrc.org/Publication/detail/nihrc-response-improving-access-to-justice-for-victims-and-witnesses-of-crim>

⁴⁶ NIHRC "Response to the Public Consultation on Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime" January 2013, available at <http://www.nihrc.org/Publication/detail/nihrc-response-improving-access-to-justice-for-victims-and-witnesses-of-crim> and para 6 (b) of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted November 1985, 40/34, available at <http://legal.un.org/avl/ha/dbpjvcap/dbpjvcap.html>

with the State's obligations in international law to "ensure that victims have access to information of relevance to their case and necessary for the protection of their interests and the exercise of their rights."⁴⁷

Overview of Clauses

Clause 28 requires the Department of Justice to issue a Victim Charter which must set out the services, the standards of services and treatment expected from the criminal justice agencies by victims. It further provides that the Charter may restrict the application of its provision to specified descriptions of victims; victims of specified offences or descriptions of conduct or specified criminal justice agencies or to cases where the criminal conduct concerned has been reported to the police. According to Clause 28 (10), 'specified' means specified in the Victim Charter. The Clause also provides that the Charter may provide for exceptions to its provisions for the purpose of ensuring compliance with any statutory provision or order of the court, avoiding jeopardising any criminal investigation or criminal process or to avoid endangering the individual. The Explanatory Memorandum explains that the exceptions and restrictions would enable a more targeted service to be provided. Clause 28 also provides that the Charter may not require anything to be done by a person acting in a judicial capacity or a person acting in the discharge of a function of a member of the Public Prosecution which involves the exercise of discretion.

Clause 29 defines a 'victim' as 'a person who is a victim of criminal conduct'. It provides that, in determining whether an individual is a victim of criminal conduct, it is immaterial that no person has been charged with or convicted of a criminal offence. If the physical or mental state of a victim is such that a person is unable to act on his or her own behalf or a victim has died, references to the victim in clause 28 are to be read as a member of the family. If a victim is under the age of 18, references in clause 28 to the victim are to be read as including references to the parent of the victim. The Victim Charter may make provision as to the persons who are to be treated as members of the family of the victim.

Clause 30 requires the Department of Justice to issue a Witness Charter and replicates provisions contained in clause 28 relating to the Victim Charter. The Witness Charter must set out the services, the standards of services and treatment expected by witnesses from the criminal justice agencies. Clause 30 provides that the Charter may restrict the application of its provision to specified descriptions of witnesses; witnesses in criminal investigations or criminal proceedings or specified criminal justice agencies or to cases where the criminal conduct concerned has been reported to the police.

⁴⁷ NIHRC "Response to the Public Consultation on Making a Difference: Improving Access to Justice for Victims and Witnesses of Crime" January 2013 , pg 14 cited the Committee of Ministers Recommendation on assistance to crime victims , para 6.1, Basic Principles , para 6 (a); and COE Guidelines on the protection of victims of terrorist acts, Guideline X

According to Clause 30 (9), ‘specified’ means specified in the Witness Charter. The Clause also provides that the Charter may provide for exceptions to its provisions for the purpose of ensuring compliance with any statutory provision or order of the court, avoiding jeopardising any criminal investigation or criminal process or to avoid endangering the individual. The Explanatory Memorandum explains that the exceptions and restrictions would enable a more targeted service to be provided. Clause 30 also provides that the Charter may not require anything to be done by a person acting in a judicial capacity or a person acting in the discharge of a function of a member of the Public Prosecution Service which involves the exercise of discretion.

Clause 31 sets out the procedure for issuing Charters under Clause 28 and 30. The Department of Justice must lay the Charter before the Assembly and the Charter comes into operation by Order. Clause 31 (3) provides that the Charter comes into operation on such date as the Department may by order appoint. An order under section 31 (3) is subject to negative resolution only if it has been made without a draft of the Order having been laid and approved by a resolution of the Assembly.⁴⁸ Therefore, where a draft of the order has been laid before the Assembly, it is subject to approval of the Assembly, where a draft of the Order has not been laid, it is subject to the negative resolution procedure. Clause 31 also enables the Department to revise the Charter and the provisions relating to the procedure also apply to the revised Charter.

Clause 32 makes provision for the effect of non-compliance. If a criminal justice agency fails to comply with the Charter issued under clauses 28 and 30, the failure does not of itself make the agency liable to criminal or civil proceedings. However, Clause 32 (1) provides that the Charter is admissible as evidence in criminal or civil proceedings and a court may take into account failure to comply with the Charter in determining a question in the proceedings.

Clause 33 provides that a victim is to be afforded the opportunity to make a victim statement. If a victim is unable to act on their own behalf to make a statement due to their physical or mental state or if the victim has died, a member of the family is to be afforded the opportunity to make a statement. If the victim is under the age of 18, the parent of the victim is to be afforded the opportunity to make a statement in addition to the victim. Subsections (4) and (5) provide that regulations may provide for other to be afforded the opportunity to make a statement in addition to or instead of the person entitled to be afforded the opportunity to make a statement. Under clause 87, these regulations are subject to negative resolution. Clause 33 also provides that the statement is to be made in writing and is a statement as to how the offence or alleged offence has affected and continues to affect the victim or the person making the statement.

⁴⁸ See clause 87 (5) of the Bill

Clause 34 relates to supplementary statements and allows the Department to make regulations to make provision for a person who has made a victim statement to be afforded the opportunity to make a supplementary statement to a victim statement. Under the Bill, these regulations are subject to the negative resolution procedure.⁴⁹

Clause 35 relates to the use of victim statements. The Department may make regulations as to the provision of a copy of a victim statement to the defence and the court. The regulations may make provision for the court to have regard to the victim statement in determining the sentence in respect of the offence. The regulations are subject to the negative resolution procedure.⁵⁰

7 Part 5: Clauses 36-43 Criminal Records

Background

The Minister for Justice appointed Sunita Mason, the Independent Advisor for Criminality Information Management for England and Wales, to conduct a review of the legislative framework governing criminal records in Northern Ireland in March 2011. Mrs Mason published her review in two parts: Part One considered the use of criminal record information in the context of disclosure relating to employment and volunteering and made a number of recommendations including:

- the portability of disclosures within workforces;
- up-dated online checking;
- ending the current system of issuing dual certificates to the employer and employee to issuing a single certificate;
- children under 16 should not be subject to criminal record checks except in certain circumstances, for example home based caring roles such as fostering or adoption.

More detail on the recommendations of Part One of the report are set out in Annex A of this paper.

Part Two of the review deals with broader aspects of the management, storage, access and retention of criminal records.⁵¹ In particular it recommends that an individual's record should be retained within the Northern Ireland Criminal Justice System for 100 years from the subject's date of birth (See Annex B for further details).⁵²

⁴⁹ Clause 87 of the Bill

⁵⁰ Clause 87 of the Bill

⁵¹ S Mason (2011) "A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland by Sunita Mason." and S Mason (2012) "A Managed Approach- Part Two: A Review of the Criminal Records Regime in Northern Ireland by Sunita Mason."

⁵² S Mason (2012) "A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland: Part Two." Pg 44

The Department of Justice conducted consultation exercises on both parts of the review. The consultation on Part One of the review was published in March 2012 and sought views on:

- whether employment vetting systems that involve Access NI could be scaled back, made more proportionate and still provide adequate protection to the public;
- how disclosures could be made more portable across different sectors of employment to reduce the number of applications made;
- whether police intelligence should form part of Access NI Disclosures;
- whether non-conviction information for example certain civil orders, police cautions, informed warnings and youth diversion disposals should be disclosed and if so, how best can this be achieved.

The Department reported that the consultation was welcomed by respondents and broadly they agreed either fully or in principle to the majority of the recommendations. In light of responses to the consultation, the summary of responses document highlighted that recommendations 4, 6, 7, 8(b), 8 (c), 8(f) and 8(g) would require changes to the Police Act 1997 and would be taken forward in the Faster, Fairer Justice Bill. Other administrative changes would be brought forward in 2012/13.⁵³ See Annex A for the recommendations and responses to the consultation.

The Department of Justice conducted a subsequent consultation on Part Two of the Review and Recommendations 9 and 10 from the Part One report in May 2012.⁵⁴ Seven of the 10 recommendations in the Part Two report were not consulted on as they endorsed existing management processes for criminal record information that were effective or which were related to ongoing work (see Annex B).⁵⁵ The paper consulted upon recommendations 9 and 10 from the Part One report and Recommendations 2 and 4 from the Part Two report. Recommendations 9 and 10 from the Part One report relating to the introduction of a filtering scheme were accepted in full. The Department indicated that to implement these changes, amendments to the Rehabilitation of Offenders (Exceptions) (Northern Ireland) Order 1979, the Police Act 1997 and to the Police Act 1997 (Criminal Records) (Disclosure) Regulations (Northern Ireland) 2008 would be required. The Department indicated that the Minister intended to introduce legislation to provide for these changes as soon as possible.⁵⁶

⁵³ DoJNI "Consultation on Part One of the Review of the Criminal Records Regime in Northern Ireland: Summary of Responses and Way forward"

⁵⁴ DoJNI consultation on Part Two and Recommendations Nine and Ten from Part One Report of the Northern Ireland Criminal Records Regime and Summary of Responses available at <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/review-of-criminal-records-regime-further-consultation.htm>

⁵⁵ DoJNI "Second Consultation on Recommendations from the Review of the Criminal Records Regime in Northern Ireland: Summary of Responses and Way Forward" November 2013, pg 6

⁵⁶ DoJNI "Second Consultation on Recommendations from the Review of the Criminal Records Regime in Northern Ireland: Summary of Responses and Way Forward" November 2013, pg 30

The Department indicated that the Minister accepted Recommendation 4 in full, and noted that the retention of criminal record for data for 100 years does not require legislative change and would be implemented from January 2014. The Department reported that the Minister accepted recommendation 2 in principle subject to further consultation.⁵⁷

Overview of Clauses

Part 5 of the Bill introduces a number of provisions aimed at streamlining arrangements for the disclosure of criminal records, reflecting many of the recommendations made by Sunita Mason in Part One of her Review.

Clause 36 (1) repeals section 101 of the Justice Act (Northern Ireland) 2011 which required copies of certain criminal conviction certificates to be given to employers and also repeals sections 113A (4) (a requirement to send a copy of criminal record certificate to registered person) and 113B (5) and (6) of the Police Act 1997 (requirement to give relevant information and copy of enhanced criminal certificate to registered person). Only applicants will routinely receive a copy of the certificate. The Explanatory Memorandum to the Bill explains that section 113B (5) 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.⁵⁸

Clause 36 (2) inserts new sections 120AC and 120AD after section 120AB of the Police Act 1997. New section 120AC makes provision for the Department to respond to requests from a registered person providing information on the progress of an application. Section 120AC (1) requires the Department to advise a registered person as to whether certificate has been issued in response to an application for a criminal record check. Section 120AC (7) enables the Department to refuse a request under subsection 1 if the request was made after the end of the prescribed period. The clause does not explicitly set the time period, but this presumably would be set out in secondary legislation either by order or regulation as section 125 of the 1997 Act provides that anything required to be prescribed shall be prescribed by regulations. According to section 125 of the 1997 Act, these are subject to the negative resolution procedure.

New section 120AD deals with the circumstances in which a registered person may receive copies of certificates. This applies if the Department gives updated information in relation to standard or enhanced criminal record certificate, the up-date information is advice to apply for new certificate or the person whose certificate the up-date information is given applies for a new certificate. According to the Explanatory Memorandum, this provision is limited to the new update service.⁵⁹ New Section 120AD

⁵⁷ DoJNI "Second Consultation on Recommendations from the Review of the Criminal Records Regime in Northern Ireland: Summary of Responses and Way Forward" November 2013, pg 30

⁵⁸ Explanatory Memorandum to the Bill, pg 30

⁵⁹ Explanatory Memorandum to the Bill, pg 30

enables the department to prescribe time periods and circumstances in responding to such requests. These delegated powers are subject to the negative resolution procedure.⁶⁰

Clause 37 amends a number of provisions in the Police Act 1997 to ensure that young persons under the age of 16 should not be subject to criminal record checks except in prescribed circumstances and that an individual under the age of 18 must satisfy the Department that there is a good reason for being registered. The Explanatory Memorandum explains that the prescribed circumstances would include home based occupations. Section 125 of the Police Act 1997 contains powers for the Department to make regulations to prescribe anything that requires to be prescribed in the Act. This would suggest that the Department have the power to make regulations to prescribe the circumstances when children under 16 are to be subject to criminal record checks. It appears that regulations made in relation to this clause are subject to the negative resolution procedure. Clause 87 of the Bill also provides that regulations made under the legislation, when enacted, will be subject to the negative resolution procedure.⁶¹

Clause 38 sets out the additional grounds for refusing an application to be registered. The clause provides a power for the Department to refuse an application to be registered if a person or body has previously been registered and has been removed from the register otherwise than at its own request. The Explanatory Memorandum to the Bill indicated that removal from the register may result from a breach of the Department's Code of Practice or condition of registration set out within the Police Act 1997 (Criminal Records) (Regulations) (Northern Ireland) 2007.

Clause 39 deals with additional safeguards in relation to enhanced criminal record certificates. It changes the duty on the Department in section 113B of the Police Act 1997 to send applications for enhanced criminal record checks to the chief officer of every relevant police office by replacing it with any relevant chief officer. The clause also replaces the test used by PSNI to make disclosure decisions under s 113B (4) of the Police Act and is amended from 'might be relevant' to 'reasonably believes to be relevant'. Provision is made for a relevant chief officer to have regard to guidance being made by the Department in exercising functions. Section 117 of the Police Act 1997 is amended to allow persons other than the applicant to dispute information contained within a certificate. Finally, clause 39 amends the 1997 Act to allow a person to apply to the independent monitor to determine whether information provided under section 113B (4) of the Act is relevant or should be included on an enhanced criminal record certificate.

Clause 40 deals with updating certificates and inserts a new section 116A into the Police Act 1997. New section 116A requires the department to give up to date information to a relevant person about a criminal conviction, a criminal record certificate or an enhanced criminal record certificate which is subject to up-date arrangements.

⁶⁰ Section 125 of the Police Act 1997

⁶¹ Clause 87 of the Bill

The Explanatory Memorandum indicates that the updating arrangements will allow an individual to apply for a variety of positions, ie that the certificate will be portable and will be updated via an online facility. Clause 40 provides that the Department must not grant an application unless a prescribed fee has been paid. The Department would need to set the prescribed fee in secondary legislation. Section 125 of the Police Act 1997 indicates that anything requiring to be prescribed would be prescribed by regulations and would be subject to the negative resolution procedure.

Clause 41 deals with applications for enhanced criminal record certificates and allows self-employed individuals to apply for an enhanced criminal record certificate. The clause amends section 113B(2)(b) by substituting a new paragraph (b). Currently paragraph section 113B(2)(b) provides that the application has to be accompanied by a statement by the registered person that the certificate is required for the purpose of an exempted question asked for a prescribed person. The new subsection enables a statement by the applicant that the certificate is required for a prescribed purpose.

Clause 42 amends sections 113A and 113B of the Police Act 1997 by inserting a new subsection 2A to allow applications for standard and enhanced certificates to be submitted electronically.

Clause 43 makes provision for the consequential amendments in schedule 4 to have effect.

8 Part 6 of the Bill- Clauses 44-49 Live Links

Background

The Department of Justice consulted on proposals to extend live links in courts in June 2012. The proposals included:⁶²

- an adjustment to allow expert witnesses on behalf of the Forensic Service Agency Northern Ireland (FSNI) and certain Police Service of Northern Ireland (PSNI) officers to give evidence by live link as the rule, rather than the exception;
- an adjustment to allow witnesses from outside the United Kingdom to give evidence in Northern Ireland in all magistrates' courts;
- an ability to hold committal proceedings by live link;
- an ability for a parole commissioner to conduct oral hearings by live link; and ;

⁶² DoJ NI "Consultation on proposals to extend the use of live links in courts" 21 June 2012

- an ability to conduct breach proceedings on behalf of Probation Board NI and the Youth Agency where an offender has already been returned to detention to be dealt with by live link;
- extending the use of live links already available in courts and psychiatric hospitals to Part 2 patients where a criminal matter is being considered.

The Department of Justice conducted a further consultation on live links in weekend courts in March 2013. The Department's proposal was that a centralised system of weekend courts be devised on the use of live link facilities. The Department also proposed that weekend hearings by live links be available for first time remand hearings.⁶³ In light of responses to the consultation, the Department proposed:⁶⁴

- to introduce legislation to allow the option of video links to be available for first remands at courts being held at weekends and public holidays;
- the package would not include live links between police stations and courts;
- to re-screen proposals for equality impact assessment purposes and conduct an EQIA including active engagement with young people;
- to review and conform the operational and technical capacity of existing live links systems before any additional services are provided; and
- to discuss with interested parties how to review and improve the operation of live links in young people's cases.

Overview of clauses

Clause 44 enables the court to give a direction that the accused may appear and give evidence in committal proceedings before the magistrates' courts by live links if the accused is likely to be held in custody or detained in hospital. The court may not give a live link direction unless the accused consents and the court is satisfied that it is not contrary to the interests of justice. The court may also rescind a live link direction at any time before or during committal proceedings if it appears to be in the interests of justice to do so. The court must also not give or rescind a live link direction unless the accused and the prosecutor have been given the opportunity to make representations. The court must also state its reasons in open court for refusing to make, or when rescinding, a live link direction. If the accused is attending committal proceedings through live link and it appears to the court that the accused is unable to see and hear the court and to be seen and heard by the court and this cannot be immediately corrected, the court must adjourn the proceedings.

⁶³ DoJNI "Consultation on the proposals for the use of live links in weekend courts" 11 March 2013

⁶⁴ DoJNI "Consultation on live links in weekend courts: summary of responses and way forward" July 2013.

Clause 45 provides for persons for the first time to attend court hearings by live link at weekends and public holidays. Clause 45 contains similar safeguards as those contained in clause 44. The court may not give a direction unless it is satisfied that it is not contrary to the interests of justice. The court may also rescind a live link direction at any time before or during proceedings. The clause empowers the Department of Justice to make an order to amend the types of hearings and the days of the week that can be covered by the live links provisions. An order made under this clause may not be made unless a draft has been laid before and approved by a resolution of the Assembly (clause 87).

Clause 46 allows for live links to be used in proceedings where a person in custody or detained in hospital has failed to comply with specified orders or licence conditions. The court must not give a live link direction unless the offender has given consent to the direction and the court is satisfied that it is not contrary to the interests of justice to give the direction. The court may also rescind the direction at any time before or during the proceedings if it appears to be in the interests of justice. The offender may not give oral evidence by live link unless the offender gives consent and the court is satisfied it is in the interests of justice. The court has to state in open court its reasons for refusing or rescinding a live links direction. The Department may make an order to add breaching of other court orders and licence provisions that can be covered under this section. An order made under this clause may not be made unless a draft has been laid before and approved by a resolution of the Assembly (clause 87).

Clause 47 inserts a new Article 11A into Part 3 of the Criminal Justice (Northern Ireland) Order 2004. It provides that certain expert witnesses will give evidence by live link in criminal proceedings unless the court directs otherwise. The court shall not give a direction unless it is satisfied that it is in the interests of justice to do so and of the efficient administration of justice. The court may rescind a direction if it appears that it is not in the interests of justice. The court cannot give or rescind a direction unless the parties in the proceedings have been given the opportunity to make representations. This clause enables the Department to prescribe the class and description of expert witnesses in regulations. These regulations will not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly (New Article 11A, subsection 7).

Clause 48 amends Part 3 of the Criminal Justice (Northern Ireland) Order 2004 by inserting a new Article 11B. This provision enables witnesses outside the United Kingdom to give evidence to a magistrates' court in Northern Ireland.

Clause 49 makes provision for the extension of live links in specified court proceedings to patients detained in hospital under the Mental Health (Northern Ireland) Order 1986. According to the Explanatory Memorandum, the current legislative framework only enables those compulsorily admitted to hospital via the criminal justice system to

appear by live link. The specified proceedings include live link for the accused in preliminary proceedings and sentencing hearings and live link for appellant in preliminary hearing or sentencing hearings.

9 Part 7 of the Bill- Clauses 50-71- Violent Offences Prevention Orders

Background

The Department of Justice consulted on proposals to introduce Violent Offender Orders (VOOs) in July 2011.⁶⁵ The proposal would allow the police to ask the court to make an order to place conditions on the behaviour of a violent offender in the community to help manage any risk a person poses to the public. The order is like a Sexual Offences Prevention Order and the person would be subject to notification requirements such as telling the police where they are living, identity details and intention to travel outside the UK.⁶⁶ The Department asked for views on whether VOOs were needed in Northern Ireland and if so how should they differ from those already in place in England and Wales.

In England and Wales, VOOs were introduced by the Criminal Justice and Immigration Act 2008. They are a civil preventative order which can place preventative measures on offenders who pose a risk of serious harm. Prohibitions, restrictions or conditions may prevent the offender from going to a specified place or premises at all times or specified times, from attending a specified event or contact with a specified person. The main criteria for a VOO in England and Wales are:⁶⁷

- a qualifying offender is a person over 18;
- the person has been convicted of a specified offence in respect of which a custodial sentence of which 12 months is imposed or a hospital or supervision order is made;

Specified offences include:

- Manslaughter;
- Soliciting Murder;
- Wounding with intent to cause grievous bodily harm;

⁶⁵ DoJNI "Sex Offender Notification and Violent Offender Orders: Proposals for Legislation" <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-proposals-for-legislation-on-sex-offender-notification-and-violent-offender-orders.pdf>

⁶⁶ DoJNI "Sex Offender Notification and Violent Offender Orders: Proposals for Legislation" Pg 39

⁶⁷ See section 98 of the Criminal Justice and Immigration Act 2008

- Malicious wounding;
- Attempt or conspiracy to attempt murder.

The duration of an order in England and Wales is a minimum of two years to a maximum of five years. The penalty for breaching an order is a maximum of five years imprisonment.⁶⁸

In the summary of responses to the Department of Justice consultation, the PSNI commented that the sentencing thresholds for VOOs in England and Wales are too high. The PSNI suggested that VOOs would provide a useful tool in risk managing serial domestic abusers and those who move from partner to partner and commit crimes. This would allow the police to be more proactive in situations where a victim is too fearful to apply for a non-molestation order. EXTERN commented that the introduction of VOOs would be likely to enhance public protection arrangements and act as a preventative measure. EXTERN also suggested that the criteria for a VOO should be offence based and not sentence based. They also recommended that VOOs are used as much as a preventative measure to prevent escalation to more serious harm. The Department responded that it intended to pursue the introduction of the orders in the Strategy Bill.⁶⁹

In a briefing to the Justice Committee in January 2013, Department of Justice officials informed the committee that Violent Offender Orders would differ to those in England and Wales in a number of respects. In Northern Ireland, the Order would be available for a longer list of offences and would be the same as the offences listed in the Criminal Justice (Northern Ireland) Order 2008 which allows public protection sentences to be given for a range of offences. In England and Wales, there is a minimum sentence of 12 months before an Order can be applied, whereas in Northern Ireland, it is proposed that an order would be available regardless of the sentence passed. It is also suggested in Northern Ireland that assault occasioning actual bodily harm would be included in situations where the conviction is related to an offence in domestic or family circumstances, whereas this is not available in England and Wales. In Northern Ireland, there will be no age restriction whereas in England and Wales, the qualifying offender must be over 18 years of age. In Northern Ireland, an order would have certain positive conditions, similar to Sexual Offences Prevention Orders (SOPOs) which can require a person to undertake a particular action.⁷⁰

⁶⁸ Section 113 of the Criminal Justice and Immigration Act 2008

⁶⁹ DoJNI "Sex Offender Notification and Violent Offender Orders: Summary of Representations Made" October 2011, pg 10

⁷⁰ Committee for Justice Official Report "Violent Offender Orders: DoJ Policy Development Update" 24 January 2013. See also Section 10 of the Criminal Justice (NI) Act 2013

Overview of Clauses

Clause 50 of the Bill defines a violent offences prevention order as an order which contains prohibitions or requirements which the court thinks are necessary for the purpose of protecting the public from the risk of serious harm. The clause specifies that an order can be made for a minimum of two years and a maximum period of five years. Serious violent harm is defined as serious physical or psychological harm caused by that person committing one or more specified offences. Any reference to protecting the public is a reference to protecting the general public or any particular members of the public. Specified offences are those contained in Part 1 of Schedule 2 of the Criminal Justice (Northern Ireland) Order 2008. These include manslaughter, kidnapping, riot, affray, false imprisonment and a number of offences included under the Offences against the Person Act 1861, amongst others. However, clause 50 also provides that assault occasioning actual bodily harm is not a specified offence unless it was committed against a vulnerable adult, a person under the age of 18, a person living in the same household as the offender or the court in sentencing treated the offence as being aggravated by hostility.

Clause 51 enables the court to make a violent offences prevention order to protect the public from the risk of serious harm where the court deals with the defendant in respect of a specified offence: where the court finds that the defendant is found not guilty of a specified offence by reason of insanity or the defendant is not fit to plead and has done the act charged in respect of a specified offence. An order can be made whether the specified offence was committed before or after the commencement of this provision.

Clause 52 enables a Magistrates' court to make a violent offences prevention order for the purpose of protecting the public from risk of serious harm on application of the Chief Constable. The conditions are that the person is a qualifying offender and the person has since the appropriate date acted in a way to give reasonable cause to believe that it is necessary for such an order to be made. The appropriate date means the date: the person was convicted of a specified offence; the person has been found not guilty of a specified offence by reason of insanity; or the person has been found to be unfit to be tried and to have done the act charged in respect of a specified offence.

Clause 53 defines a qualifying offender in relation to applications made by the Chief Constable. A qualifying person is a person who has been convicted of a specified offence or: the person has been found unfit to be tried and to have done the act charged in respect of a specified offence. Clause 53 also applies to offences committed outside Northern Ireland, an act that constituted an offence under the law in force in the country concerned and would have constituted a specified offence if committed in Northern Ireland. An act committed in a foreign jurisdiction will be taken to be a specified offence unless the person serves a notice on the Chief Constable denying that the offence was a specified offence, the reasons for denying that this is the case and requiring the Chief Constable to prove that this condition is met.

Clause 54 specifies that a violent offences prevention order may contain provisions prohibiting a person from doing anything described on the order or requiring the person to do anything described in the order. The only prohibitions or requirements that may be included in the order are those that are necessary for the purpose of protecting the public from risk of serious harm.

Clause 55 enables the person who is the subject of the VOPO or the Chief Constable to apply to the court for an order varying or discharging a violent offences prevention order or an order renewing a violent offences prevention order for a maximum period of five years. A violent offences prevention order may only be renewed or varied to impose additional prohibitions or requirements on the person if the court considers it is necessary to do so for the purpose of protecting the public from risk of serious harm. An order may not be discharged before the end of the period of two years unless consent to discharge is given by the person who is the subject of the order and the Chief Constable.

Clause 56 allows the court to make an interim violent offence prevention order where an application for a violent offence prevention order has been made. An interim order can be made if the court is satisfied that the person is a qualifying offender and, if the court were determining the application, it would be likely to make a violent offences prevention order and it is desirable to act before that application is determined. Interim orders may contain prohibitions or requirements the court considers necessary to protect the public from risk of harm. An interim order can be varied or discharged in the same way as the main order as per clause 55. However, subsection 5 of clause 55 does not apply (this provides that the court cannot discharge an order before the end of two years unless consent is given by the person subject to the order or the Chief Constable). The Explanatory Memorandum to the Bill indicates that an interim order cannot come into force while a person is subject to a custodial sentence or detained in hospital.

Clause 57 provides that the court may not begin a hearing for a main or interim violent offences prevention order or the variation, discharge or renewal of an order unless it is satisfied that the person has been given notice of the application and the time and place of the hearing at a reasonable time before the hearing.

Clause 58 provides for appeals against the making of a violent offences prevention order or an interim order or the making or refusal to vary, renew or discharge an order. A person may appeal against the making of a violent offences prevention order as if the order were a sentence passed on the defendant for the offence. Where a person is appealing against the making of an order on an application made by the Chief Constable, the appeal will be heard at the County Court. A person may appeal the making or refusal to vary renew or discharge a violent offences prevention order. Where an application for an order was made to the Crown Court, the appeal will go to the Court of Appeal or in any other case to the County Court.

Clause 59 deals with notification requirements and provides that an offender who is subject to a violent offences prevention order will also be subject to notification requirements.

Clause 60 specifies that an offender subject to notification requirements must notify the required information to the police within 3 days of the main or interim order coming into force. Clause 60 sets out the required information the person must give to the police including: date of birth, national insurance number, name or names used on the relevant date, home address on the relevant date, the address of any other premises in the UK at which the offender regularly resides or stays and any information prescribed by regulations made by the Department of Justice. Regulations made under clause 60 will not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly (clause 87 (2)). When determining the 3 day period, any time spent in remand or in custody, detention in a hospital or outside the UK is to be disregarded.

Clause 61 provides that an offender subject to notification requirements must within a period of 3 days notify any changes in information provided initially to the police. Changes to information include use of a name by the offender; any change of the offender's address; the address of any premises in the UK the offender has stayed or resided at for a qualifying period which has not been notified to the police; or the release of the offender from custody or any prescribed details. The qualifying period is defined as a period of 7 days or two or more periods in any period of 12 months, which taken together amount to 7 days. Clause 61 also enables the offender to notify the police of any changes before they are due to occur.

Clause 62 requires an individual subject to notification requirements to re-notify information provided to the police within an applicable period after each notification date. Where the applicable period ends while the person is remanded or committed to custody, serving a custodial sentence or is detained in a hospital, the person has to re-notify within three days of their release or discharge. Clause 62 also provides that the offenders who do not have a regular address or location of place in the UK they can be found at or if there is more than one place may be subject to different notification requirements as may be prescribed in regulations made by the Department of Justice. In any other case, the applicable period is the period of one year. This clause does not apply to an offender who is subject to an interim violent offences prevention order. The regulations made by the Department must be laid in draft and approved by a resolution of the Assembly (clause 87(2)).

Clause 63 requires that an offender subject to notification requirements must notify the police if they intend to be absent from their home address for a period of more than 3 days, not less than 12 hours before leaving that home address. The clause specifies the information that must be provided including, the date the offender will leave that home address, the offenders travel arrangements, the offender's accommodation arrangements and the offender's date of return. Where an offender has notified a date

of return to the home address and returns home other than the date notified, the offender must notify the date of return to the police within 3 days of the actual return.

Clause 64 allows the Department of Justice to make regulations with respect to offenders subject to notification requirements setting out the notification requirements for travel outside the United Kingdom. A notification under this clause must provide information on:

- the date of travel;
- the country or if there is more than one;
- the first country the offender proposes to travel; and
- any other information prescribed by regulations regarding departure from or return to the UK or the offender's movements while outside the UK.

The regulations must be laid in draft and approved by a resolution of the Assembly (see clause 87(2)).

Clause 65 stipulates that an offender must give a notification to the police by attending at any police station in Northern Ireland prescribed by regulations made under the Sexual Offences Act 2003 and give an oral notification to any police officer or to any person authorised for the purpose by the police officer in charge of the station. Any notification must be acknowledged by the police in writing. Fingerprints or photographs may be taken to verify the offender's identity.

Clause 66 provides that it is an offence for a person to fail to comply without reasonable excuse with a prohibition or requirement contained in a violent offences prevention order or an interim order. A person also commits an offence if they fail without reasonable excuse to provide information: on initial notification or changes to information within the three day period; if the person intends to be absent from their home address for more than three days; if they did not provide information within three days that they did not return home on date of notification; did not provide fingerprints or photographs to verify identity; or any other requirement imposed by regulations. A person will have committed an offence on the first day of failing to comply with provisions without reasonable excuse. The clause also provides that a person cannot be prosecuted more than once in respect of the same failure. A person guilty under this section is liable, on summary conviction, to a term of imprisonment not exceeding 6 months or a fine not exceeding the statutory maximum (£5000⁷¹) or both; or on a conviction on indictment to a term of imprisonment not exceeding five years or a fine or both.

Clause 67 provides that a Chief Constable may for the purposes of prevention, detection, investigation or prosecution of offences, supply information to a relevant

⁷¹ Article 5 (2) of the Fines and Penalties (Northern Ireland) Order 1984, as amended by Article 3 of the Criminal Justice (Northern Ireland) Order 1994.

Northern Ireland department, the Secretary of State or a person providing relevant services to a Northern Ireland department or the Secretary of State for the purpose of verifying the information. Relevant Northern Ireland department means the Department for Employment and Learning, the Department of Environment or the Department of Social Development. The section does not authorise anything that contravenes the Data Protection Act 1998.

Clause 68 provides that a report compiled under clause 67 may be supplied by the relevant Northern Ireland department, the Secretary of State or a person who provides relevant services to a Northern Ireland department or the Secretary of State.

Clause 69 allows the Department of Justice to make regulations requiring a person who is responsible for an offender subject to notification requirements and is either in custody or detained in hospital, to give notice to specified persons that they have become responsible for the offender, of any occasion when the offender is released, or that a different person has become responsible for the offender. Regulations may describe specified persons and make provision for specifying the responsible person. These regulations would be subject to negative resolution (Clause 87(1)).

Clause 70 provides the police with powers of entry and search of the offender's home. An application must be made by a police officer of the rank of superintendent or above to the court which has to be satisfied that a number of specified requirements are met in relation to any premises before issuing a warrant. The requirements are: that the address specified in the application is an address which was last notified; that there are reasonable grounds to believe that the offender resides there or may regularly be found there; that it is necessary for a constable to enter and search the premises for the purpose of assessing the risks posed by the offender; and that constable has sought to gain entry to the premises to search them for that purpose and had been unable to obtain entry on at least two occasions. The warrant may authorise the police to use reasonable force if necessary to enter and search the premises. The warrant may also authorise multiple entries in order to enter the premises for the purpose of assessing the risks posed by the offender subject to notification requirements.

Clause 71 is an interpretative clause which defines a number of terms used in part 7 of the Bill, including the meaning of country, custodial sentence, detention in hospital, home address, interim and main violent offences prevention order, qualifying offender and specified offences.

10 Part 8 of the Bill- Clauses 72-85: Miscellaneous Provisions

10.1 Jury Service

10.1.1 Background

Currently in Northern Ireland, there is a statutory age limit for jury service of 70 and the right to excusal from jury service for persons aged between 65 and 69 years of age.

The Department of Justice consulted on whether there should be an upper age limit for jury service in Northern Ireland in November 2011.⁷² The document also consulted on if there was to be an age limit, at what should an upper age limit be set and finally, whether should there be an age related right to excusal.

The majority of respondents agreed that competence, representativeness and efficiency were the right principles upon which to base policy decisions. The majority of respondents did not think there should be an upper age limit for jury service. The majority of respondents also favoured a right to excusal for older people but there was not a consensus about the age at which a right to excusal should apply.⁷³ In light of the responses, the Minister decided that he intended to abolish the upper age limit and increase the age of excusal as of right to 70.⁷⁴

The Department conducted a targeted consultation to make amendments to the Juries (Northern Ireland) Order 1996 in June 2012.⁷⁵ The Department proposed to amend Schedule 1 to specify that a person convicted and sentenced to an indeterminate custodial sentence or an extended custodial sentence would be disqualified for life. It was also proposed that the Bill would include a number of technical amendments as detailed below to update Schedule 2 (persons disqualified from jury service) and Schedule 3 (persons excusable as of right from jury service) and to amend the provisions relating to the duties of the Chief Electoral Officer. The technical amendments are set out below:

1. Remove “Members of the Royal Irish Regiment” from Schedule 2 [agreed with Ministry of Defence: no longer any need for separate designation since the disbandment of the part-time battalions: full-time members of the regiment are already ineligible under another provision of the Schedule]
2. Remove “person appointed for purposes of Article 7(6) of Treatment of Offenders Order” from Schedule 2 [this Article has been repealed and re-enacted elsewhere and relates to probation officers who are already listed in the Schedule]
3. Add Serious Organised Crime Agency to Schedule 2 [rectifying an omission: SOCA was not added to the Schedule at the time of its creation]

⁷² Consultation document available at this link <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/upper-age-limit.pdf>

⁷³ DoJNI “The Upper Age Limit for Jury Service in Northern Ireland: Report of the Consultation” July 2012, pg 7,

⁷⁴ DoJNI “The Upper Age Limit for Jury Service in Northern Ireland: Report of the Consultation” July 2012, pg 36

⁷⁵ All information in this section taken from a letter sent from the Department of Justice to consultees dated 21 June 2012, received with thanks from the Department via email on 01/09/14

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| 4. Amendment to Schedule 3 – “amend entry relating to “Secretary and any Director of the Northern Ireland Audit Office” [Secretary is now a redundant office]. |
| 5. Revoke Article 4(2)(b)(i) – duty on Chief Electoral Officer not to select those disqualified, ineligible or excused [updating legislation to reflect practice; information about persons disqualified, ineligible or excused may be out of date or unknown]. |

Overview of clauses

Clauses 72-76 of the Bill relate to jury service. Clause 72 removes the maximum age for jury service of 70. The clause ensures that persons over the age of 18 are qualified and liable for jury service.

Clause 73 of the Bill amends article 4(2) of the Juries (Northern Ireland) Order 1996 by removing the duty on the Chief Electoral Officer not to select for inclusion electors whose names have been furnished by several Juries Officers as being disqualified, ineligible or excused from jury service.

Clause 74 amends Schedule 1 of the Juries (Northern Ireland) Order 1996 by adding a new paragraph to add to the categories of persons who are disqualified from jury service to include those who have received indeterminate custodial sentences.

Clause 75 amends Schedule 2 of the Juries (Northern Ireland) Order 1996 to add to the categories of persons ineligible for jury service to include members and staff of the National Crime Agency. Paragraph 3 also amends Schedule 2 of the Juries (Northern Ireland) Order by removing 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 76 amends Schedule 3 of the Juries (Northern Ireland) Order 1996 to update the list of persons excusable from jury service. Paragraph 2 of clause 76 replaces “Representatives to the European Parliament” with “Members of the European Parliament”. Paragraph 3 replaces “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.” Paragraph 4 replaces “persons aged between 65 and 70” with “persons aged over 70”.

10.2 Early Guilty Pleas

Background

Currently, there is a statutory power to give credit to those who plead guilty. Article 33 of the Criminal Justice (Northern Ireland) Order 1996 provides that courts, in determining a sentence on an offender who has pleaded guilty, shall take into account (a) the stage in the proceedings for the offence at which the offender indicated his

intention to plead guilty and (b) the circumstances in which the indication was given. The court must also state in open court the credit that is being given to the offender for the early guilty plea.⁷⁶

The Department of Justice conducted a public consultation entitled *Encouraging Early Guilty Pleas* in January 2012. Options for reform included:⁷⁷

Option 1- Enhancing the existing arrangements by increasing understanding and transparency of the current scheme- the defendant would be provided with appropriate information at relevant stages, advising that a reduction in sentence may be available for an early guilty plea;

Option 2- Reforming procedures along similar lines to other neighbouring jurisdictions- by encouraging early engagement between prosecution and defence; provision of clear and concise summary of information of the criminal case and the evidence the prosecution intends to rely on; a formal ‘earliest opportunity to plead’; and transparency of sentencing arrangements.

Option 3- Introducing a statutory presumption of credit for an early guilty plea: to introduce a new law that means that a defendant who pleads guilty at an early stage to a legislatively defined level credit.

Twelve respondents to the consultation commented on the proposals. Ten respondents were in favour of one or more of the options. Two respondents, the Law Society and Belfast Solicitors’ Association, were opposed to the proposals and indicated that they thought that the proposals did not properly recognise the presumption of innocence.⁷⁸

The Department of Justice concluded that Option 2 had the broadest support and indicated that progressing elements of this option represented the best way forward.⁷⁹ The Department also noted that it was clear from the responses in relation to Option 1, that there would be benefit in enhancing the understanding of current arrangements. Furthermore, the Department acknowledged that in practice, many judges already state in open court the level of credit that would have been awarded for an early guilty plea, but that making this a duty would increase transparency.⁸⁰

⁷⁶ Article 33(2) of the Criminal Justice (Northern Ireland) Order 1996

⁷⁷ DoJNI “Encouraging Early Guilty Pleas: A Department of Justice Consultation” January 2012, pg 24

⁷⁸ DoJNI “Encouraging Earlier Guilty Pleas; And Reform of Committal Proceedings, August 2012 Pg 6

⁷⁹ DoJNI “Encouraging Earlier Guilty Pleas; And Reform of Committal Proceedings, August 2012 Pg 21

⁸⁰ DoJNI “Encouraging Earlier Guilty Pleas; And Reform of Committal Proceedings, August 2012 Pg10

Overview of Clauses

Clauses 77 and 78 of the Bill deal with early guilty pleas. Clause 77 requires the court in certain circumstances to indicate the sentence it would have imposed for the offence if the defendant had pleaded guilty to the offence at the earliest reasonable opportunity in the proceedings. This applies in any criminal proceedings where a defendant is convicted of an offence and did not at any stage of the proceedings plead guilty to the offence or in the court's opinion, the defendant's guilty plea or indication to plead guilty was not entered at the earliest reasonable opportunity.

Clause 78 requires a solicitor who is representing a person in connection with an investigation into an offence or proceedings against the client for an offence to advise the client of the effect of Article 33(1) of the Criminal Justice (Northern Ireland) Order 1996 (reduction in sentences for guilty pleas) and the likely effect on any sentence that might be passed on the client of pleading guilty to the offence at the earliest reasonable opportunity or indicating an intention to plead guilty at the earliest possibility. The Law Society must also, with concurrence of the Lord Chief Justice, make regulations with respect to the giving of advice. Solicitors also have to notify the court that they have complied with the duty to advise the client. If a solicitor contravenes this section, any person may make a complaint to the Solicitors Disciplinary Tribunal.

The Explanatory Memorandum suggested that the majority of respondents to the policy consultation supported Option 2 which can largely be given effect by non-legislative means. However, some consultees identified that Option 1 would support these non-legislative measures and that the provisions in the Bill are in line with this approach.⁸¹

10.3 Avoiding Delay in Criminal Proceedings

Background

The Department of Justice published a consultation paper, *Statutory Case Management* in November 2012. The issue for the consultation was how criminal cases could be managed more efficiently and effectively. The Department highlighted that two reviews, by the Criminal Justice Inspection Northern Ireland and the Committee for Justice, found that issues such as lack of preparation at court, failure to agree witnesses or evidence can prolong a trial as adjournments are required and opportunities to progress cases are missed.⁸²

The consultation paper considered four options for delivering better case management. The four options were:⁸³

⁸¹ Explanatory Memorandum to the Bill, pg 16

⁸² DoJNI "Managing Criminal Cases: A Department of Justice Consultation" November 2012, pg10

⁸³ DoJNI "Managing Criminal Cases: A Department of Justice Consultation" November 2012, pg34

1. A general statutory duty to progress cases;
2. Specific statutory duties with identified timescales for named stages in the criminal justice process;
3. Case management procedure rules, similar to the model in England and Wales, rules setting out specific duties on the main parties to the case;
4. Placing the current Practice Directions on a statutory footing.

The Department's preferred option was Option 3, concluding that clarity around the duties and responsibilities, combined with an enforcement mechanism provides the best balance.⁸⁴ The majority of respondents expressed a preference for Option 3 as the most effective solution, either on its own or in combination with another option (primarily option 1).⁸⁵ In light of the responses, the Department proposed to legislate for:⁸⁶

- A statutory framework for the duties on the prosecution, defence and judiciary, similar to the Lord Chief Justice's Practice Directions, but modified in line with the case management portions of the Criminal Procedural Rules IN England and Wales, in particular those sections which deal with duties on the judiciary; and
- A general duty to achieve a just outcome as quickly as possible, paying particular attention to the needs of victims, witnesses and vulnerable people.

Overview of Clauses

Clause 79 allows the Department to make regulations to impose a general duty on anyone involved in criminal cases to reach a just outcome as quickly as possible. The regulations must take particular account of the need to identify and respect the needs of victims, witnesses and young people. Under clause 87, these regulations would be made by negative resolution.

Clause 80 allows the Department to make regulations in relation to the management and conduct of criminal proceedings in the Crown Court or a magistrates' court. The regulations may impose duties on the court, the prosecution and the defence. The regulations may also confer functions on the court in relation to active case management. Active case management includes: early identification of the real issues

⁸⁴ DoJNI "Managing Criminal Cases: A Department of Justice Consultation" November 2012, pg 38

⁸⁵ DoJNI "Managing Criminal Cases: Report on Consultation Responses", March 2013, pg 5

⁸⁶ DoJNI "Managing Criminal Cases: Report on Consultation Responses", March 2013, pg 5-6

and needs of witnesses; early setting of a timetable for the progress of case; monitoring the progress of the case and compliance with directions; ensuring evidence is presented in the shortest and clearest way; discouraging delay by avoiding unnecessary hearings; encouraging participants to co-operate on the progression of a case; making the use of technology and giving any direction appropriate to the needs of a case as early as possible. Under clause 87, these regulations will be made by negative resolution.

10.4 Public Prosecutor's Summons

Background

The Criminal Justice Inspection Northern Ireland (CJINI) published a report, *Avoidable Delay* in May 2006. The report highlighted that the signing of summonses contributed to avoidable delay. This was reported as problematic in specific areas where the operation of split offices required a lay magistrate from Fermanagh and Tyrone to attend Belfast to sign summonses, or particularly when magistrates are on holiday. CJINI recommended that alternative arrangements for signing of summonses should be implemented, including the use of electronic signatures which are authorised by a PPS prosecutor.⁸⁷ A further report by CJINI in 2010 on *Avoidable Delay* highlighted that the summons process takes longer than charge cases as the summons is required to be issued by the PPS, signed by a lay magistrate and served directly by the PSNI or increasingly by post.⁸⁸

Subsequently, the Northern Ireland Court Service (now the Northern Ireland Courts and Tribunals Service) consulted on a proposal to allow the Public Prosecution Service to commence criminal proceedings in the magistrates' court by issuing a summons on their own authority without first having to seek permission from a lay magistrate.⁸⁹

There were 25 responses to the consultation and 17 commented specifically on the proposal. Eleven consultees agreed that a PPS prosecutor should be able to issue a summons without recourse to a lay magistrate. Ten respondents considered that benefits such as reducing delay and costs savings would be achieved. One respondent indicated that, whilst historically judicial intervention was necessary in the summoning process because the police were at the same time complainants and investigators, this requirement was no longer necessary. One respondent expressed concerns at the removal of the lay magistrate and suggested a number of safeguards. These included that a PPS prosecutor should only initiate a prosecution where satisfied that evidence

⁸⁷ CJINI " Avoidable Delay" May 2006 pg 48 <http://www.cjini.org/CJINI/files/ed/ed9d97d7-a15f-4fa5-90d1-3e3867124c21.pdf>

⁸⁸ CJINI " Avoidable Delay" June 2010 pg 92 <http://www.cjini.org/CJINI/files/c0/c0243f51-1e73-47e8-a6fa-344d5f0063c5.PDF>

⁸⁹ NICS Consultation document "Proposal to allow the Public Prosecution Service to issue a summons" March 2010, 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

can be adduced in court which is sufficient to provide reasonable prospect of conviction and where it is taken in the public interest.⁹⁰

Six respondents did not agree with the proposal. Five respondents considered that the role of the lay magistrate provides an independent level of scrutiny of the process. Five respondents suggested that whilst CJINI recommended alternative arrangements for the signing of summonses, that the report fell short of recommending the removal of lay magistrates from the process. Two respondents highlighted the CJINI report recommended the introduction of an electronic signature which would be added by a lay magistrate and authorised by a prosecutor. Two respondents highlighted that the proposal did not reflect the report of the Criminal Justice Review which highlighted the importance of lay involvement in the criminal justice system. Four respondents raised issues around transparency and accountability and suggested that the proposal moved the balance of power too far in favour of the PPS and could potentially damage confidence in the criminal justice system. Four respondents noted that the system in England and Wales set out in the consultation paper and issued a note of caution in making comparisons between the jurisdictions, which operate differently. Four respondents argued the case for change had not been made and no evidence of the extent of delay caused by existing arrangements had been made. Two respondents commented that the views of lay magistrates were not included in the consultation paper.⁹¹

Overview of Clause

Clause 81 provides that where a complaint has been made by a Public Prosecutor to a lay magistrate that a person has, or is suspected, of committing a summary offence or an indictable offence where a magistrates court or county court has jurisdiction, the Public Prosecutor may issue a summons to that person requiring them to appear in court to answer the complaint. The clause also enables the Public Prosecutor to re-issue a summons without complaint to a lay magistrate, if they are satisfied that first summons had not been served.

10.5 Defences Access to Premises

Background

Currently, defence representatives in criminal proceedings have no remedy in the courts to apply for an order to inspect the property where a crime is alleged to have

⁹⁰ Northern Ireland Courts and Tribunals Service “Consultation on a Proposal to allow the Public Prosecution Service to issue Summons: Summary of Responses and Way Forward” pg 5, http://www.courtsni.gov.uk/en-GB/Publications/Public_Consultation/Pages/default.aspx

⁹¹ Northern Ireland Courts and Tribunals Service “Consultation on a Proposal to allow the Public Prosecution Service to issue Summons: Summary of Responses and Way Forward” pg 5-6

taken place. In practice, access to property is usually agreed informally between the defence and the prosecution or police. The Department of Justice conducted a targeted consultation on a proposed statutory provision be made to provide all courts in criminal cases with the power to make an order allowing defence representatives access to the property.⁹² Indications from the Department are that there were no objections from consultees to the proposals.⁹³

Overview of Clause

Clause 82 allows the court in criminal proceedings to make an order to allow access by or on behalf of the defendant to specified premises. The clause also allows the court to make such an order where a person is convicted of an offence and appeals against the conviction. Subsection 3(c) defines any place and includes a vehicle or moveable object. The court is prohibited from making such an order unless it is satisfied that access to the premises is required in connection with the preparation of the defendant's defence or appeal and the order is an appropriate means of securing access. The order may authorise entry into and inspection of the premises and any other specified activity on the premises. An order may also include conditions in connection with access including requiring the person to be accompanied by a police officer, the date and time when the access is to take place, the conduct of activity and other matters as the court sees fit.

10.6 Court Security Officers

Background

Consultation did not take place on the provisions to increase the powers of the court security officers. The Explanatory Memorandum explained that this is because it is a technical measure correcting a lacuna in the current law.⁹⁴

Overview of Clauses

Clause 83 amends Schedule 3 of the Justice (Northern Ireland) Act 2004 to make provision for powers exercisable by a court security officer in a relevant building also extends to the boundary of the land on which the building stands. The Explanatory Memorandum explains that this closes a gap to enhance the security of court venues and court users by specifying that Court Security Officer's powers to search, exclude,

⁹² Information obtained from a letter sent by the Department of Justice to consultees on provisions identified for inclusion in the Justice Bill, dated 21 June 2012

⁹³ Information obtained via email from an official in the Department of Justice, 01/09/14

⁹⁴ Explanatory memorandum to the Bill, pg 3

remove or restrain an individual are extended to include the grounds on which court buildings sit.⁹⁵

10.7 Youth Justice

Background

Clauses 84 and 85 make provision for the youth justice system. Clause 84 amends current legislation on the aims of the youth justice system in Northern Ireland. This amendment is in line with a recommendation made in the *Report of the Review of the Youth Justice System in Northern Ireland* in 2011. That report noted that the aims of the youth justice system agreed in legislation in 2002 were a significant improvement. The report noted that while the aims of the youth justice system include the welfare of the child, they are not the principal aim, whereas Article 3 of the UN Convention on the Rights of the Child (UNCRC) states that the welfare of the child should be reflected in legislation as the principal aim. The report recommended that section 53 of the Justice (Northern Ireland) Act 2002 (the aims of the youth justice system) is amended to fully reflect the best interests of the child.⁹⁶ The Department of Justice consulted on the Youth Justice Review's report in September 2011. The consultation sought views on the section of the report which dealt with children's rights and international standards, including the recommendation to amend Article 53.⁹⁷ The Department published a summary of responses to the consultation.⁹⁸ The following sections set out the views on the recommendation to amend Article 53 of the Justice (Northern Ireland) Act 2002.

Age Sector Platform agreed with the recommendation but suggested that it must not absolve an offender of their actions and that action must be taken to ensure that a child is disciplined for any offence as part of the process of rehabilitation and justice. They said that it was in the best interests of the child and wider society that young offenders are held to account for their actions.

Various respondents commented that the recommendation did not go far enough and that the whole of the UNCRC should be incorporated. Other respondents said that the UNCRC and international children's rights should be incorporated and used as the benchmark upon which the youth justice system in Northern Ireland, including all of relevant law, policy and practice should be audited and measured against.

Mencap and the Equality Commission commented that proposals needed to include the UN Convention on the Rights of Persons with Disabilities. The Ulster Unionist

⁹⁵ Explanatory memorandum to the Bill, pg 22

Party, Children's Law Centre and Include Youth called for a UK wide Bill of Rights possessing a subsection addressing the particular circumstances of Northern Ireland.

Queens University Belfast recommended that Article 53 should be rewritten and that the aim of the Youth Justice System should be children's development and well-being rather than prevention of offending and public safety. CINI advocated the development and implementation of a children's rights impact assessment tool. NICCY and Quaker Service highlighted the importance that all professionals in the youth justice system understand implications of the amendment and are fully committed to ensuring it is borne out.

Overview of Clauses

Clause 84 amends section 53 of the Justice (Northern Ireland) Act 2002 by substituting subsection 3. The new wording of section 53(3) requires persons and bodies working in the youth justice system to have the best interests of children as a primary consideration. Persons and bodies must also have regard to the welfare of children affected by the exercise of their functions with a view to furthering their personal, social and education development. The wording in the clause reflects the language in Article 3 (1) of the UN Convention on the Rights of the Child (UNCRC) which states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Clause 85 amends section 10 of the Criminal Justice Act (Northern Ireland) 2013 (release on license of child convicted of serious offence). Clause 85 (2) omits section 10 (5) of the 2013 Act. Clause 85 (3) substitutes section 10 (6) of the 2013 Act with a new subsection 6. Currently 10 (6) of the 2013 Act makes reference to subsection (5). The amendment is required as Section 10 (5) will be deleted. The Explanatory Memorandum says that the amendment is to maintain the integrity of the section.

⁹⁶ A Review of the Youth Justice System in Northern Ireland, pg 100-101, published September 2011

⁹⁷ DoJNI "Consultation Report on the Report of the Youth Justice Review in Northern Ireland" September 2011, pg 25, <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-the-report-of-the-review-of-youth-justice-nov11.doc>

⁹⁸ <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/youth-justice-review-consultation-summary-of-recommendations.pdf>

11 Supplementary Provisions and Schedules

Supplementary Provisions

Clauses 86-92 of the Bill contain supplementary provisions. Clause 86 allows the Department by order to make supplementary, incidental or consequential provision and transitory, transitional or saving provisions as it considers appropriate for the purposes of giving effect to the Act. An order may amend, repeal or revoke any statutory provision, including the Act. An order which amends, repeals or revokes any statutory provision has to be laid in draft and approved by a resolution of the Assembly, but other orders made under Clause 86 will be subject to negative resolution (see clause 87).

Clause 87 deals with regulations, orders and directions and makes provision for the level of Assembly control required for the delegated legislation. Clause 88 is an interpretative clause. Clause 89 provides that schedule 5 which contains transitional provisions and savings has effect. Clause 90 provides that the repeals set out in Schedule 6 are to have effect. Clause 91 sets out that a number of provisions of the Act are to come into operation on the day after Act receives Royal Assent and enables the Department to make commencement orders. Clause 92 provides for a short title of the Bill to be cited as the Justice Act (Northern Ireland) 2014.

Schedules

There are six schedules to the Bill. Schedule 1 contains amendments to other pieces of legislation consequential to the provisions on a single court jurisdiction. Schedule 2 contains amendments consequential to the abolition of preliminary investigations and mixed committals. Schedule 3 contains amendments consequential to the provisions on direct committal for trial. Schedule 4 contains amendments consequential to the provisions on criminal records. Schedule 5 outlines transitional provisions and savings. Schedule 6 lists the repeals brought in as a result of the Bill.

12 Potential Amendments to the Bill

In June 2014, the Department of Justice signalled to the Justice Committee that it intended to propose a number of amendments to the Bill. They are as follows:⁹⁹

- A clause in the Bill setting out that certain information would be shared between specified organisations for the purpose of informing victims and witnesses about services;

⁹⁹ Information obtained from a letter sent from the Department of Justice on 24 June 2014 to the Clerk of the Justice Committee available at <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Legislation--Committee-Stage-of-Bills/The-Justice-Bill-Committee-Stage/Details-of-the-Call-for-Evidence-on-the-Justice-Bill-and-the-Proposed-Amendments/>

- Publication of a code of practice in relation to criminal records - an amendment to make it clear the Code must be published and it is being made at the suggestion of the Attorney General;
- A statutory power to allow AccessNI to share information with the Disclosure and Barring Service (DBS) for barring purposes;
- Review of criminal records where convictions or disposals have not been filtered - the Attorney General suggested that there should be provision for a person to ask for discretion to be exercised in their particular case and the Minister agreed to the introduction of a review process;
- Amendment of clause 78 on early guilty pleas to omit subsection 3 which confers a duty on the Law Society with the concurrence of the Lord Chief Justice to make regulations with respect to giving advice, this amendment is being made on the advice of the Attorney General;
- An amendment on defence access to premises on the recommendation of the Attorney General so that court can only grant an application for inspection for premises where it is necessary to ensure the fair trial rights of the defendant.

The Justice Committee also intends to consider a proposal from the Attorney General for Northern Ireland for a potential amendment to the Coroners Act (Northern Ireland) 1959 which it first considered during the Committee Stage of the Legal Aid and Coroners' Courts Bill. The Attorney General has a power under the section 14 of the Coroners (Northern Ireland) Act 1959 to direct an inquest where it is considered advisable to do so. However, the Attorney General has no power to obtain papers or information that may be relevant to the exercise of the power. It is proposed that the amendment could confer a power on the Attorney General to obtain papers and provide a statutory basis for disclosure. The proposed wording of the amendment can be found at Annex C.¹⁰⁰

Mr Jim Wells, MLA advised members during a meeting of the Justice Committee on 2 July 2014, that he intended to bring forward an amendment to the Bill to restrict lawful abortions to National Health Services premises, except in cases of urgency when access to National Health Service premises is not possible and where no fee is paid. The amendment would also provide an additional option to the existing legislation for a period of up to 10 years imprisonment and a fine on conviction on indictment. The wording of the proposed amendment can be found at Annex D.

¹⁰⁰ <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Legislation--Committee-Stage-of-Bills/The-Justice-Bill-Committee-Stage/Details-of-the-Call-for-Evidence-on-the-Justice-Bill-and-the-Proposed-Amendments/>

13 Equality

The Department of Justice conducted an equality consultation on the Justice Bill in March 2013. The Department's overall assessment was that the policy package contained within the Bill positively benefits all Section 75 groups. The Department emphasised that all sections of the public would benefit as victims and witnesses would see improvements. The Department also recognised that in terms of offenders, any changes would likely impact on young males. The Department highlighted that it undertakes considerable work which would mitigate any impact. Examples outlined in the consultation included:¹⁰¹

- The Youth Justice Agency exists alongside a youth justice strategy focusing on early intervention to reduce and prevent offending;
- Rehabilitation legislation exists to allow many offenders to put the past behind them;
- The Department spends considerable resources on crime prevention and education programmes to ensure that young people are diverted away from the criminal justice system;
- Statutory and voluntary bodies also operate early intervention programmes to try and prevent young people at risk of offending from doing so;
- The Probation Service provides a range of programmes, specialist service and financial assistance to offender focused groups in the voluntary sector;
- The Prison Service provides a range of prisoner programmes, trains its staff to deliver programmes and employs a range of professionals including psychologists to help offenders prepare for successful return to the community;
- The Probation Service works with prisons to deliver pre and post release programmes.

The report on the consultation concluded that there was broad support for the proposals with respondents welcoming the Department's approach. A number of responses were in agreement with the Department's overall assessment that the Bill would have positive benefits for all Section 75 Groups.

There were a number of specific issues raised by consultees. Sinn Fein made a number of criticisms about the Department of Justice's approach to equality screening, in particular the absence of specific types of data.¹⁰² The Department responded that in each individual screening, policy officials took a proportionate approach to the gathering and analysis of available data. The Department noted that data is more

¹⁰¹ DoJ NI "Equality Consultation for a Proposed Justice (NI) Bill 2013", 8 March 2013.

readily available in some areas than others. The Department also concluded that it welcomed any further data or analysis.¹⁰³

The Children's Law Centre (CLC) raised concerns regarding proposals to create a single territorial jurisdiction for county and magistrates' courts, particularly potential for adverse impact on younger or older people, as well as people with disabilities. This was linked to access to transport and possible difficulties travelling to courts geographically remote from their home location.¹⁰⁴ The Department responded that there are safeguards contained in the administrative framework with the guiding principle that court business will continue to be listed in the appropriate court and parties will have the opportunity to make representations if transfer is being considered.¹⁰⁵

The CLC was supportive of the recommendation to amend Section 53 of the Justice (NI) Act 2002 to reflect the best interest principle in Article 3 of the UNCRC but were concerned that the spirit of Article 3 would not be legislated for in the way recommended by the Committee on the Rights of the Child.¹⁰⁶ The Department responded that it was its intention to make it explicit that the best interests of children must be a primary consideration for those exercising functions within the youth justice system. The Department emphasised that the amendment would not only strengthen the statutory aim but also fully reflect the actual terms of Article 3 of the UNCRC.¹⁰⁷

The Grand Orange Lodge of Ireland raised concerns about proposals to extend eligibility for jury service and the removal of a maximum age limit. They suggested that the proposal would have a disproportionate impact on those over the age of 70 and the widowed or disabled, as well as women.¹⁰⁸ The Department responded that its view was that removing the maximum age limit would make juries more representative of society. To mitigate, the Department concluded there should be a right of excusal for any person aged 70 or over. The Department attached particular weight to views expressed by the Age Sector Platform and the Commissioner for Older People. Both of which supported the proposal and the Executive's policy of promoting the full participation of older people in civic life.¹⁰⁹

Regarding encouraging early guilty pleas, the CLC raised concerns that the focus appeared to be on the speeding up of the criminal justice system and saving money, putting at risk the right to a fair trial. The Department responded that the primary focus

¹⁰² DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013

¹⁰³ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 13 and 14

¹⁰⁴ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 15

¹⁰⁵ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 15

¹⁰⁶ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013

¹⁰⁷ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 17

¹⁰⁸ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 18

¹⁰⁹ DoJ NI "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 19

is reducing the harmful impact of delay on the cause of justice and that the provisions do not create an early guilty plea scheme. The Department's view was that the proposal would increase transparency in sentencing as the judiciary would be obliged to give the offender information about the construction of their sentence. In relation to the proposal to require solicitors to advise their clients about the existence of the legislation, the Department concluded that knowledge of the existing legal framework as explained to the defendant by their solicitor is unlikely to create any new equality issues.¹¹⁰

The Northern Ireland Council for Ethnic Minorities (NICEM) raised a number of issues relating to the Victim Charter. NICEM called for inclusion of all rights set out in EU Directive 2012/29/EU which establishes minimum standards on the rights, support and protections provided for victims of crime. The Department confirmed that it intended to give due regard to the Directive in the development of the Charter.

NICEM highlighted that victims of racially motivated crime were not included in the list of intimidated witnesses in the draft strategy issued for consultation in 2012. The Department responded that victims of racially motivated crime were now included in the new Victim and Witness Strategy.

NICEM called for bi-lingual workers in the Victim and Witness Care Unit. The Department said that whilst not directly related to the content of the Bill, this could be considered as plans are being developed for the roll out of the service.¹¹¹

The Commission for Victims and Survivors asked whether it would be useful for the Bill to make specific reference to victims and survivors of the conflict. The Department responded that provisions of the Bill would refer to all victims of crime rather than referring to specific types of victims.¹¹²

The Department concluded that it was satisfied that no substantial or significant equality issues remain unaddressed and that the provisions proposed would not create any adverse impact on Section 75 categories.¹¹³

14 Issues raised during the Second Stage Debate

The principles of the Bill were generally welcomed during the second stage debate but issues were raised by some Members in relation to specific provisions. They related to the proposals on: single court jurisdiction; the committal process; prosecutorial fines, criminal records; early guilty pleas;

¹¹⁰ DoJN "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 20-21

¹¹¹ DoJN "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 24-25

¹¹² DoJN "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 25

¹¹³ DoJN "Report on Equality Consultation for a Proposed Justice (NI) Bill 2013", June 2013, pg 29

Single Court Jurisdiction

The clauses in the Bill on the creation of a single jurisdiction for County Courts and Magistrates' courts were generally welcomed. However, some issues were raised by Members during the second stage debate on the Bill. Mr Alban Maginness MLA noted from officials in the Department of Justice that there was no resistance among county court judges or magistrates and it could provide for a more efficient system for the management of cases. Mr Maginness said:

*However, I regret that the historic and traditional divisions of the County Court may be dropped and forgotten. They are historic and there is value in the history of these individual divisions. I also regret that the title of resident magistrate will be dropped. That historic title should have been retained in our system, because it is unique to Ireland. There was a value in the creation of that judicial office.*¹¹⁴

Mr Jim Allister, MLA cautioned on the outworkings of the single jurisdiction and questioned whether the proposals would protect the interests of victims and witnesses or will it be operated to judicial or professional convenience. Mr Allister expressed concerns that a judgment may not be given in the court in which the case was heard.¹¹⁵

The Justice Minister, Mr David Ford responded to issues highlighted during the debate and indicated that there would be issues to consider when looking at a single jurisdiction to ensure that it is principally in the interests of victims and witnesses.

Committal Process

There was general support for the proposals for reform of the committal process during the Second Stage Debate. The Chairperson of the Justice Committee, Mr Paul Givan, MLA indicated that, during the inquiry into the criminal justice services available to victims and witnesses of crime, the Committee supported the proposals to reform the committal process and to abolish the use of preliminary investigations and the use of oral evidence at preliminary inquiries. He said:¹¹⁶

During the inquiry, the Committee was advised that the judiciary supported reform of the committal process, seeing no operational advantage for the courts in retaining the right to call witnesses at committal proceedings. Victims and witnesses of crime also indicated that the procedure only served to cause further stress and trauma, as it resulted in them having to give evidence and be cross-examined more than once.

¹¹⁴ Official Report of the Second Stage Debate of the Justice Bill, 24/06/14, <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹¹⁵ Official Report of the Second Stage Debate of the Justice Bill, 24/06/14, <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹¹⁶ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

Lord Morrow, also supporting the proposals for reform, emphasised the cost of proceedings which incur unnecessary court time and require staff to be redeployed and specific days set aside for such hearings.¹¹⁷

However, concerns were raised about the proposals in the Bill by two Members. Mr Alban Maginness, MLA said there was a theoretical and real value in committal proceedings and there should be an opportunity to test the evidence at that preliminary stage. He highlighted that a complete abolition of evidence on oath could cause delay at the trial stage as some issues could have been dealt with at a preliminary investigation or inquiry. Mr Maginness suggested there should be a residual retention of the ability to call evidence on oath which he did not envisage being used extensively, but could be a safeguard.¹¹⁸

Mr Jim Allister, MLA also expressed concerns regarding the proposals. He said:¹¹⁹

I have yet to read a set of prosecution papers that do not, on the face of it, appear plausible or even convincing about the guilt of the accused. It is, on occasions, the testing of that evidence that shows that it is not entirely as it seems. How is that done? It is done through cross-examination, putting to witnesses alternative scenarios, their possible motives and their inconsistencies — all of that — and suddenly finding that what reads like a very coherent and convincing statement is in fact full of holes and is falling apart...

Mr Allister also indicated that “such a blanket ban does not serve the interests of justice at all.”¹²⁰

The Justice Minister, Mr Ford noted that there was general support in relation to the proposals on committal but addressed the concerns highlighted by the two members. However, he said that his concerns were based on the committal process becoming a first go at vulnerable witnesses.¹²¹

Prosecutorial Fines

Mr Wells, MLA said he welcomed the introduction of fines at an early stage, but expressed concern regarding the lack of a criminal record arising and there may be a tendency to opt for the fine too often. Mr Wells argued that the criminal record was the deterrent rather than the fine.¹²²

Mr Jim Allister, MLA suggested that the system was wide open to abuse and that a person only had to consent to accepting the fine to avoid prosecution. He raised

¹¹⁷ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹¹⁸ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹¹⁹ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²⁰ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²¹ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²² <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

concerns about clause 17 as it is currently drafted during the debate. He noted that clause 20 (2) states that "*If the offer in a notice under section 17(1) is accepted, no proceedings may be brought for the offence to which the notice relates.*" Mr Allister argued that the clause as currently drafted could have unintentional consequences as a person could have immunity from prosecution from accepting the notice, whether the fine is paid is another matter. Mr Allister said "*one could understand it if it said, "If the notice is accepted and the fine is paid, no proceedings may be brought for the offence to which the notice relates."*"¹²³

The Minister noted that there was broad support for prosecutorial fines but responded to the issues raised by Mr Wells and Mr Allister. The Minister said that prosecutorial fines would be recorded and the information held. Decisions could be made on the basis of the information as to whether a prosecutorial fine is appropriate at a future stage.¹²⁴

Criminal records

The proposals regarding criminal records disclosure were broadly welcomed during the second stage debate. Mr Wells highlighted difficulties with AccessNI due to the issue of multiple certificates for different youth organisations within the church. He said:¹²⁵

Therefore, anything that can achieve a single transferable certificate awarded by Access Northern Ireland has to be a good thing, consistent, of course, with protecting the vulnerable and our young children to make certain that the perpetrators of horrible crimes are detected in the system. We will watch with interest the Committee Stage to see how that pans out.

Mr Dickson MLA whilst welcoming the proposals for the potential financial benefits benefits to applicants that could ensure issued a note of caution that checks need to be accurate to ensure that "no-one slips between the cracks."¹²⁶

Ms Mc Corley, MLA highlighted that Mrs Mason's review made interesting reading and the recommendations of the report were wide ranging. She said

*Ultimately, we will be seeking a structure in which the correct and proportionate vetting systems are put in place while still providing the appropriate protection to the public.*¹²⁷

The Justice Minister, David Ford, MLA addressed some of the issues highlighted during the Second Stage Debate. He acknowledged that there have been difficulties for a number of years because of the multiplicity of certificates being issued. However, he

¹²³ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²⁴ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²⁵ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²⁶ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²⁷ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

disagreed with the point raised by Mr Wells about somebody carrying out voluntary work in a number of different organisations in one church. The Minister said:¹²⁸

From my personal experience, that would all be covered by information from Access NI, but there are clearly problems if somebody is a volunteer with different organisations not under the same umbrella. Even then, some cases relate to employment as well. That is why we are very keen to see the concept of the portable certificate, the online application and the ability to get round those difficulties, which will make things much more efficient than had been the case.

Early Guilty Pleas

Mr Maginness, MLA raised two issues in relation to the clauses in the Bill on early guilty pleas. The first issue related to clause 77 and he suggested that it was not clear what the clause intended. Clause 77(2) states:

The court in sentencing D for the offence must indicate the sentence which the court would have imposed for the offence if D had pleaded guilty to the offence (or indicated D's intention to do so) at the earliest reasonable opportunity in the proceedings.

Mr Maginness suggested that it was unclear what the court has to do in these circumstances and called on the Minister to clarify this. Mr Maginness also argued that clause 78 which deals with the duty of the solicitor to advice on early guilty pleas was an unnecessary addition to the volume of provision on criminal proceedings.¹²⁹

Mr Elliott, MLA also expressed concern that, by putting the issue of early guilty pleas on a legislative basis, that there may be pressure on those facing criminal charges to enter an early guilty plea. Mr Elliott said he was keen to see safeguards to mitigate the pressure on those facing criminal proceedings.¹³⁰

Mr Allister, MLA also questioned whether some of the clauses were there to bulk out the Bill. He suggested that Court of Appeal guidelines already set out the percentage rebate if someone pleads guilty. He also argued that the provision of information about early guilty pleas is so elementary that everyone already does it and it is the bread and butter of solicitors and barristers who practice in the criminal courts.¹³¹

The Justice Minister responded to some of the issues raised in relation to early guilty pleas. He emphasised that early guilty pleas was not an issue of plea bargaining but

¹²⁸ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹²⁹ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹³⁰ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹³¹ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

about provision of information and ensuring the information is available. The Minister also acknowledged that lawyers may already provide information on early guilty pleas, but agreed that there would be no harm in making that explicit.¹³²

Avoiding Delay in Criminal Proceedings

The proposals on progressing criminal proceedings and case management were generally welcomed. However, issues were raised by two members, Mr Maginness and Mr Allister. Mr Maginness noted there were tensions in clause 79 between reaching a just outcome as swiftly as possible. Mr Allister suggested that there was an inclination in the Bill to legislate for the sake of legislating and that the drafters of the legislation had little experience of the criminal courts. Mr Allister highlighted that answering questions by judges on the state of readiness of cases and why they were not ready already takes place.

The Justice Minister noted Mr Allister's arguments about scrutiny in the courts in Belfast on the state of readiness of cases but said that this does not happen in every court in Northern Ireland and that this needs to become the case in every court.¹³³

Youth Justice

Mr Patsy McGlone, MLA raised concerns that there is a view that the proposed amendment under clause 84 (aims of the youth justice system) is not entirely compliant with the UNCRC and that it will not fulfil the recommendations of the youth justice review either. The Justice Minister responded to this issue, stating:¹³⁴

Whilst I am aware that there are those in the children's lobby groups who have some concerns about the proposal as it currently stands within the Bill, my advice is that the provision delivers on both the spirit and the letter of the youth justice review and on what is intended by the UNCRC. I will certainly be interested to hear any evidence that comes to the Committee to the contrary, but my advice at the moment is that it is an entirely satisfactory provision.

¹³² <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹³³ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

¹³⁴ <http://www.niassembly.gov.uk/Assembly-Business/Official-Report/Reports-13-14/24-June-2014/#8>

Annex A: Recommendations made by Mrs Mason in Part One of “A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland.”¹³⁵

Recommendation	Detail	Department of Justice response ¹³⁶
Recommendation 1	Government should assess how many people working or volunteering with children and vulnerable adults have not been subject to a criminal records check. Once established, such checks should be undertaken as soon as is practically possible	Views not sought in the consultation as Minister has written to the Health Minister to ask that his department co-ordinates the response to this recommendation through the interdepartmental group on safeguarding children
Recommendation 2	Where employers knowingly make unlawful criminal record check applications, they are subject to suitable penalties and sanctions	Recommendation accepted in full
Recommendation 3	Access NI should be resourced to: <ul style="list-style-type: none"> <li data-bbox="493 1343 795 1551">• Check applications applied for on enhanced criminal record applications are correct; <li data-bbox="493 1574 795 1747">• Provide clearer guidance about all aspects of criminal record checking; <li data-bbox="493 1769 795 1895">• Act as a one stop shop for both individuals and 	Recommendation accepted in part. The Minister has not accepted that AccessNI can be a one stop shop. It cannot give definitive advice on whether a post involves regulated activity

¹³⁵ S Mason (2011) “A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland by Sunita Mason.”

¹³⁶ DoJ Consultation on Part One of the Criminal Records Regime in Northern Ireland and summary of Responses and Way Forward, <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/consultation-on-review-of-the-criminal-records-regime-in-northern-ireland.htm>

	registered bodies	
Recommendation 4	Children under 16 should not be subject to criminal record checks except in home based caring roles (for example fostering and adoption).	Recommendation accepted in full
Recommendation 5	The Government should commence section 56 of the Data Protection Act in NI as soon as possible. This would cease the practice of employers obtaining information about employees through Subject Access Checks from the police	The Department did not consult on this recommendation as it was a reserved matter for the Ministry of Justice and this section of the Act has not been commenced anywhere in the UK
Recommendation 6	A system of portable disclosures (checks should be portable within workforces) and updated online checking be introduced as quickly as possible in NI	Portability should be introduced and taken forward in the next Justice Strategy Bill, consultation sought views whether certificates should become portable within but not across workforces. The Minister already accepted a system of portable disclosures and updated online checking as soon as possible. Following the consultation the Minister decided that checks should be portable between workforces.
Recommendation 7	The current system of issuing dual certificates to employer and employees be replaced by a single criminal record certificate that is issued to the applicant. The applicant will be responsible for the disclosure of the certificate.	The Minister accepted this recommendation and did not seek views in the consultation on this recommendation.
Recommendation 8 a	Police information should continue to be available on	Recommendation accepted in full

	enhanced criminal record checks	
Recommendation 8b	The test used by PSNI to make disclosure decisions under s 113B (4) of the Police Act is amended from 'might be relevant to 'reasonably believes to be relevant'	Recommendation accepted in full
Recommendation 8c	A statutory code of practice is developed in Northern Ireland to assist police to decide what information should be released	Recommendation accepted in full
Recommendation 8d	Police information is provided in a consistent manner on criminal record checks and the reason for that information being disclosed is set out on the certificate	Recommendation accepted in full
Recommendation 8e	PSNI have a maximum of 60 days to decide if they have information that should be released	This recommendation has been accepted, However, the Minister has not agreed to the option set out in the consultation document that checks could be issued after 60 days without all the available police information
Recommendation 8f	The current additional information powers under section 113B (5) of the Police Act 1997 are repealed (these relate to the ability to issue information to employers) However, police can still use common law powers to give information to employers if it is on the public interest to do so	Recommendation accepted in full

Recommendation 8g	AccessNI establishes an independent representations process to deal with cases where individuals wish to dispute police information or criminal conviction information disclosed	<p>View sought on the following options:</p> <ul style="list-style-type: none"> • To ask a different PSNI officer to review the information subject of the complaint • To invite a chief police officer from another force to review the information • To set up a body to look specifically at complaints; • To use an independent monitor of complaints
Recommendation 9	AccessNI should routinely disclose informed warnings, cautions and details of diversionary youth conferences on standard and enhanced checks. Where this involves a young person, the information should only be disclosed if the offence is recent.	Recommendation consulted upon in Part Two Consultation, accepted in full by Minister ¹³⁷
Recommendation 10	The Department of Justice should bring forward proposals to filter out convictions which are both old and minor and criminal record information such as cautions for disclosure purposes. The Department should consult widely on this to ensure their proposals command appropriate support.	Recommendation consulted upon in Part Two Consultation, accepted in full by Minister ¹³⁸

¹³⁷ DoJ consultation on Part Two and Recommendations Nine and Ten from Part One Report of the Northern Ireland Criminal Records Regime and Summary of Responses available at <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/review-of-criminal-records-regime-further-consultation.htm>

¹³⁸ DoJ consultation on Part Two and Recommendations Nine and Ten from Part One Report of the Northern Ireland Criminal Records Regime and Summary of Responses available at <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/review-of-criminal-records-regime-further-consultation.htm>

Annex B: Recommendations made by Mrs Mason in “A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland- Part Two”¹³⁹

Recommendation	Detail	Department of Justice Response¹⁴⁰
Recommendation 1	A Review of offences carried out as Recordable and Non Recordable should be carried out as a priority.	This has been deferred until a process for conducting a similar review for England and Wales has been conducted
Recommendation 2	An individual’s criminal record should be clearly defined as all Recordable offences in respect of which an individual has been convicted or received a caution, informed warning or diversionary youth conference.	Recommendation has been accepted in full in principle subject to further consultation
Recommendation 3	The Causeway Data Sharing Mechanism should continue to be the central system for maintaining, managing and sharing records in Northern Ireland and that investment in the system should be maintained to ensure it evolves to meet future requirements.	Accepted without further need for consultation
Recommendation 4	An individual’s record should be retained within the Northern Ireland Criminal Justice System for 100 years from the subject’s date of birth.	Implementation does not require any changes in legislation and will be implemented with effect from 1 January 2014
Recommendation 5	I welcome the agreement reached with the Home Office concerning the routine updating of the Police National	New processes to be introduced at earliest opportunity, vires not sought

¹³⁹ S Mason (2012) “A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland: Part Two.”

¹⁴⁰ DoJ consultation on Part Two and Recommendations Nine and Ten from Part One Report of the Northern Ireland Criminal Records Regime and Summary of Responses available at <http://www.dojni.gov.uk/index/public-consultations/archive-consultations/review-of-criminal-records-regime-further-consultation.htm>

	Computer with all Northern Ireland Criminal Records and recommend the new system is implemented as soon as possible.	in consultation
Recommendation 6	I welcome the current collaborative sharing arrangements for the sharing of individual crime record information between police services in the Republic of Ireland and Northern Ireland. I recommend that these arrangements should be appropriately enhanced to aid the protection for both jurisdictions.	Mrs Mason has been asked by the UK government to review its international strategy for sharing of information across the EU, the Department will continue to contribute towards that review, the Department are therefore not consulting on this recommendation.
Recommendation 7	Northern Ireland criminal record data should continue to be strictly controlled and that it should only be provided to the United Kingdom criminal justice and related government organisations that have a legal, necessary, valid and legitimate business need for access to fulfil their statutory duties that are required to be fulfilled.	The Minister is content that access to criminal information is strictly controlled and meets statutory requirements. The consultation is not seeking views on this recommendation
Recommendation 8	Any organisations that are provided access to the Northern Ireland criminal record data, now or in the future, must continue to maintain an auditable record of every record accessed the purpose for such access.	The Minister is content that access to criminal information is strictly controlled and meets statutory requirements. The consultation is not seeking views on this recommendation
Recommendation 9	The Department of Justice, in collaboration with other criminal justice organisations, should more clearly publicise the process for individuals to challenge perceived inaccurate information contained within their criminal record to ensure that erroneous information is corrected.	The Minister agreed with this recommendation and guidance on the process should be more clearly explained and publicised. The Consultation did not seek views on this recommendation

Recommendation 10	The development of comprehensive and easily understood guidance, tailored for individuals to fully explain the criminal record management process.	The Minister fully supported this recommendation and agreed that public awareness about the criminal record process should be enhanced.
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Annex C - Proposed Wording of Attorney General's Amendment¹⁴¹

"X(1) The Attorney General may for the purposes of consideration of whether or not to direct an inquest under section 14 (1) require any person who in his opinion is able to provide information or produce documents relevant to his consideration to provide any such information or produce any such documents.

(2) A person may not be compelled for the purposes of subsection (1) to provide any information or produce any document which that person could not be compelled to provide or produce in civil proceedings in the High Court.

(3) Where any information or document required to be provided or produced under this section consists of, or includes, information held by means of a computer or in any other form, the Attorney may require any person having charge of, or otherwise connected with the operation of, the computer or other device holding that information to make the information available, or produce the information, in legible form.

(4) Every person who fails without reasonable excuse to comply with a requirement under subsections (1) or (3) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

¹⁴¹ Taken from a letter from the Attorney General to the Justice Committee on 5 March 2014 available at <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Legislation--Committee-Stage-of-Bills/The-Justice-Bill-Committee-Stage/Details-of-the-Call-for-Evidence-on-the-Justice-Bill-and-the-Proposed-Amendments/>

Annex D: Proposed Wording of Jim Wells, MLA Amendment¹⁴²

Ending the life of an unborn child

11A.-(1) Without prejudice to section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945 and subject to subsection (2) any person who ends the life of an unborn child at any stage of that child's development shall be guilty of an offence and liable on conviction on indictment to a period of not more than ten years' imprisonment and a fine.

(2) It shall be a defence for any person charged with an offence under this section to show-

(a) that the act or acts ending the life of an unborn child were lawfully performed at premises operated by a Health and Social Care Trust, or

(b) that the act or acts ending the life of the unborn child were lawfully performed without fee or reward in circumstances of urgency when access to premises operated by a Health and Social Care Trust was not possible.

(3) For the purposes of this section a person ends the life of an unborn child if that person does any act, or causes or permits any act, with the intention of bringing about the end of the life of an unborn child, and, by reason of any such act, the life of that unborn child is ended.

(4) For the purposes of this section 'lawfully' in subsection (2) means in accordance with any defence or exception under section 58 and section 59 of the Offences Against the Person Act 1861 and section 25 of the Criminal Justice Act (Northern Ireland) 1945.'

¹⁴² <http://www.niassembly.gov.uk/Assembly-Business/Committees/Justice/Legislation--Committee-Stage-of-Bills/The-Justice-Bill-Committee-Stage/Details-of-the-Call-for-Evidence-on-the-Justice-Bill-and-the-Proposed-Amendments/>