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Our ref: JCP\26\226

28 October 2026

Dear Kathy,

SL1: PROPOSALS ON THE EXPANSION OF OUT-OF-COURT DISPOSALS

The Department of Justice (DOJ) intends to introduce a Statutory Rule under the powers granted by The Justice Act (Northern Ireland) 2011. This Statutory Rule will be subject to the Assembly's draft affirmative resolution procedure.

Purpose of the Statutory Rule

1. The Statutory Rule will enable the Police Service of Northern Ireland (PSNI) to issue a Penalty Notice, provided for in Part 6, Chapter 1 of, and Schedule 4 to, the Justice Act (Northern Ireland) 2011 for a broader range of offences. In relation to offences which PSNI can presently issue a Penalty Notice for under the Act it will increase the financial amounts of Penalty Notices. The statutory rule will add four additional offences, namely Common Assault and the individual offences of Possession of Class A, B and C drugs. Common Assault and the Possession of Class A drugs will attract penalty amounts of £150. Possession of class B and C drugs will attract penalty amounts of £120. The penalty amounts of existing offences will all be increased to £120, with the exception of the offence of being drunk in a public place which due to legislative reasons may only be increased to £50.

2. Penalty Notices were established under the Justice Act (Northern Ireland) 2011 to provide the PSNI with additional mechanisms for addressing low-level offending. Expanding the range of offences eligible for disposal by way of a Penalty Notice is intended to give police officers a broader and more consistent set of tools for dealing with low-level, first-time, and non-habitual offenders. Decisions on whether a Penalty Notice is appropriate in any particular case will be informed by PSNI operational

instructions and guidance, which outline a range of factors for officers to consider—including the views of the victim.

3. The proposed expansion of Penalty Notices under the Justice Act (Northern Ireland) 2011 has been developed through sustained engagement and collaborative working with relevant partners. The policy proposals have been informed by extensive consultation with a wide range of stakeholders, ensuring that a flexible and evidence-based approach has been applied throughout the development process.

4. Penalty Notices were introduced in 2012 to provide more effective mechanisms for delivering justice and to support the efficient operation of the justice system. The cross justice Out of Court Disposals Working Group has identified a number of additional offence types which frequently result in low-level court fines or other noncustodial disposals when prosecuted at court, and which it considers suitable for inclusion within the existing Penalty Notice scheme. Using a diversionary disposal for low-level cases—where an alleged offender is diverted from the formal criminal justice process as an alternative to prosecution—offers a range of benefits, including:

    - offering a proportionate response to low level offending where the offender has admitted the offence.
    - delivering swift, simple and effective justice that serves as a deterrent.
    - recording an individual's criminal conduct for possible reference in future criminal proceedings such as in criminal records or other similar checks.
    - reducing the likelihood of reoffending, and
    - reducing the amount of time police officers spend completing paperwork and attending court (in addition to simultaneously reducing the burden on courts themselves), allowing them to focus on dealing with more serious crime.

5. The legal imperative to implement the rule is set out in the Justice Act (Northern Ireland) 2011 as follows -

    - Section 59(1)(a) of the 2011 Act provides that for the purposes of penalty notices and penalties, a "penalty offence" is limited to the offences described in the first column of Schedule 4 to the Act.
    - Section 59(2) of the 2011 Act provides that The Department may by order amend an entry in either column of Schedule 4 or add or remove an entry, while Section 59(5) of the 2011 Act confirms that no order shall be made under subsection (2) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.
    - While Section 107(2) of the 2011 Act provides that orders made by the Department under the Act are subject to negative resolution, this provision does not apply to Section 59(2) of the 2011 Act by virtue of Section 107(3).

- By virtue of Section 59(3), an order under Subsection (2) may not provide for the penalty payable in respect of a penalty offence to be, "an amount which is more than a quarter of the amount of the maximum fine for which a person in liable on summary conviction of the offence", and Officials have adhered to this instruction for setting the penalty amounts.
- The Explanatory Notes to the 2011 Act also set out that The Department may amend Schedule 4 by way of a draft affirmative resolution order of the Assembly.

6. Officials initially considered adding an additional 38 offences to the Penalty Notice scheme to bring it line with the PSNI Community Resolution Notice (CRN) list. However, following engagement, consultation, and analysis, it was concluded that efforts should be focussed on the six main offences that could potentially deliver the greatest benefits for the Justice system - Common Assault, Assault on a constable, Assault Occasioning Actual Bodily Harm (AOABH), and Possession of Class A, Class B, and Class C drugs.

7. Following further engagement with the Justice Committee and having considered the feedback received during the consultation, Officials then recommended removing Assault on a constable and AOABH offences from the proposal, deciding to focus on the 4 offences which would have biggest impact on creating efficiencies within the Justice System.

8. Regarding the proposed new offences, Officials from across the Justice Sector who make up the Out of Courts Disposal working group conducted research to determine the median fine amount imposed in the magistrates' court upon conviction. This information has guided the setting of the proposed new penalty notice amounts, which are established slightly below the court fines to encourage acceptance of an Out of Court Disposal and thus deliver efficiencies within all engaged justice sectors by keeping a case out of the court system.

9. There is some risk around transferring decision making for these offences from the Judiciary to PSNI Officers, however, this risk is mitigated by the use of comprehensive operational guidance, and Out of Courts Disposal Working Group dip sampling. A review of the operational implementation will be carried out after an initial 6-month period to ensure that the Penalty Notices issued are meeting the defined criteria. This will be followed by a full evaluation after 12 months.

10. Expanding the use of Out of Court Disposals is an essential part of the wider Speeding Up Justice Programme of work aimed at reducing delay across the justice system, which is a key priority of the Minister, the Criminal Justice Board, and is a Programme for Government commitment. The work undertaken in bringing this statutory rule before the Justice Committee and the Assembly is in line with the Programme for Government (PfG) commitment which requires the Department to explore 'options for

expanding the use of Out of Courts Disposals to speed up the time taken to dispose of those cases and help to reduce pressure on Courts and other justice agencies'. This work is also one element of the Programme funded through the Public Sector Transformation Board which will help to drive the pace of much-needed system change. The addition of these 4 offences to schedule 4 of the Justice Act (NI) 2011 is a critical factor for ensuring the success of future stages of The Speeding up Justice Programme by creating additional capacity within the magistrates' courts and across the Justice Sector.

Previous Engagement with the Committee

11. The Governing Act (the Justice Act (Northern Ireland) 2011) underwent Committee scrutiny at various Committee sessions before being laid before the Assembly and receiving Royal Assent.

12. The consultation for expanding the use of Out of Court Disposals underwent Committee scrutiny on 26th June 2025 via a written briefing. This was followed by a letter to the committee on 18th July 2025 addressing queries raised by the Committee.

13. DOJ Officials also provided oral evidence to the committee on 19th February 2026 providing a summary of the consultation responses and the proposed way forward.

14. Following that, DOJ Officials provided a further written response to queries on 2nd March 2026 as requested by The Justice Committee.

15. The Committee for Justice did not come to an agreed view on the proposals and accepted the offer for the Permanent Secretary to attend the Committee to discuss proposals further. This meeting took place on 26 March and the Committee were keen to understand the position of the Police Federation. The Committee then followed up in writing to request more detailed information on or a copy of the Police Federation's response to the consultation.

16. The Department responded in writing and on 17th April Members considered further correspondence from the Department on this matter and noted their respective positions. Following consideration and discussion, the question was put on whether the Committee is content with the Department's proposal in respect of the expansion of out of court disposals to give powers to the PSNI to issue Penalty Notices for the offence of assault on a constable. However, as the votes for and against were equal, the proposal fell.

17. As the Committee for Justice could not agree a position on whether to include the addition of Assault on a constable in the penalty notice framework, the Department has not included this offence in the amendments to schedule 4.

Financial Implications

18. There are no new significant costs/financial implications arising from the statutory rule. Fines for these offences are already handed down by the magistrates' courts. The statutory rule aims to reduce the burden on the Court by having these fines issued by way of penalty notice rather than by the Judiciary, thus creating efficiencies.

19. The Out of Court Disposals Working Group determined the median fine amount imposed in the magistrates' courts upon conviction for the offences to be added to schedule 4. Advice from the group has guided the proposed setting of penalty notice amounts, which are established slightly below the court fines to encourage acceptance of an Out of Court Disposal. The operational efficiencies created by issuing the Penalty notices will result in benefits across the spectrum of Justice Partners; Police Service of Northern Ireland (PSNI); Public Prosecution Service (PPS); Northern Ireland Courts and Tribunals Service (NICTS); and Lady Chief Justice's Office (LCJO).

Consultation

20. The Department's consultation on the proposed expansion of Out of Court disposals including Penalty Notices in the Justice Act (Northern Ireland) 2011 ran for 12 weeks from the 7 July 2025 to the 28 September 2025. Officials decided to run the consultation for 12 weeks as opposed to the standard 8 weeks, taking account of the summer holiday period, to allow all potential respondents the opportunity to participate. To encourage responses to the consultation and being cognisant of the Committees concerns regarding public engagement, Officials conducted a series of actions and events beyond the standard press release and targeted mailshots to key stakeholders. Other key steps taken included: - Organising online public awareness sessions on 12th and 13th August and 18th September; Additional social media posts to engage the public; Delivering an awareness session to a range of Victims groups on 21st August; Meeting with the Victims of Crime Commissioner Designate; and Sending additional targeted mailshots specifically to Police and Community Safety Partnerships (PCSPs).

21. In addition to these awareness-raising measures, the proposals underwent significant scrutiny through a series of Assembly Questions and debates, as well as commentary on social media and radio coverage.

22. There were 162 responses to the consultation. Of this total, 25 were from organisations and 137 from individuals. In general, there was a significant divergence of opinion in relation to proposals to expand the use of Penalty Notices between organisations and individuals.

23. Additionally, a significant number of the organisational responses to the inclusion of the offences proposed were "unanswered" or "unsure" ranging between 32% to 40%, which perhaps highlighted the complexity of the matters under consideration.

24. Some of the criminal justice stakeholders that responded to the consultation included Probation Board for Northern Ireland (PBNI), Chief Inspector of Criminal Justice, The Bar of Northern Ireland, Commission for Victims of Crime Office, Law Society, Northern Ireland Policing Board, Police Federation for Northern Ireland, Public Prosecution Service (PPS), Superintendents' Association of Northern Ireland, and the PSNI.

25. The complete analysis of the consultation responses was published in February 2026 and can be found at the Department's website under Publications at Report on outcome of Out of Court Disposals consultation .

26. The consultation invited views on expanding police powers to enable a greater range of offences regarded as low-level offending to be diverted away from the courts, through extending the use of Penalty Notices (often referred to as 'Penalty Notices for Disorder' or 'PNDs'), expanding powers for the Public Prosecution Service (PPS) for Prosecutorial Fines legislation and on a number of related matters. The amendments to schedule 4 of the Justice Act (Northern Ireland) 2011 brought forward by this statutory rule are only concerned with expanding the use of Penalty Notices and increasing the penalty amounts, therefore this summary focusses on the outcomes relating to these topics only.

27. With regards to the expansion of offences suitable for disposal by way of a Penalty Notice which aims to provide PSNI with additional tools to deal with low-level offending and to seek to align more closely with the range of offences which PSNI can presently deal with by way of Community Resolution Notice (CRN), the six main offences that were consulted on as potential Penalty Notice offences were Common Assault, Assault on a constable, Assault Occasioning Actual Bodily Harm (AOABH), and Possession of Class A, Class B, and Class C drugs. The focus on these offences was informed by data which highlighted that they accounted for some of the highest volumes of cases prosecuted at magistrates' courts.

28. There was a notable lack of support for the proposal to include AOABH in the penalty notice framework, therefore the Department has excluded this offence from the amendments to schedule 4.

29. The Department also explored the potential expansion of Penalty Notices to a wide range of offences, specifically an additional 38 beyond the initial six offences noted above. The aim of this was to align with the current PSNI CRN offence list. Therefore, the consultation also asked for views on expanding Penalty Notices to 38 broader

offences which include theft, public order, road traffic, licencing, public processions, fraud, and whether there was any merit in including any other offences as a Penalty Notice.

30. There was a notable lack of support for adding the additional 38 offences to the Penalty Notice list, therefore the Department concluded that there was limited benefit in moving forward with these offences.

31. The consultation also sought opinions on raising the monetary amounts of Penalty Notices for existing Penalty Notice offences, which have remained unchanged since their introduction in the 2011 Act. The consultation showed that there was substantial support for increasing these amounts. The consultation also explored by how much the penalty amounts should be increased. These responses have informed the Department's decision to proceed with the changes to schedule 4 of the Justice Act (NI) 2011 as set out in the Draft Statutory Rule.

Compliance with Section 24 of the Northern Ireland Act 1998

32. The statutory rule is compliant with section 24 of the Northern Ireland Act 1998. The Department is satisfied that the rule is within the legislative competence of the Assembly and compatible with the European Convention on Human Rights. Penalty Notices are provided for under the Justice Act (NI) 2011, acceptance remains voluntary, and individuals retain the right to have the matter determined by a court. The amendments do not create new criminal offences or apply retrospectively, and the penalty amounts are capped in accordance with section 59 of the 2011 Act. The Department also met with the Northern Ireland Human Rights Commission to discuss the proposals and provided the Human Rights Impact Assessment for review. No substantive concerns were raised; however, all points have been duly considered and reflected in the Department's approach.

Consideration by the Executive

33. The SL1 and draft statutory rule have not been referred to the Executive Committee as the proposals do not meet the criteria set out in paragraph 2.4 of the Ministerial Code. While the proposals support delivery of an agreed Programme for Government commitment, they do not represent a new or amended Executive priority. In line with paragraph 7.2.28 of the Handbook on Statutory Legislation, the Minister will notify Executive colleagues of the intention to bring forward this statutory rule.

Equality Impact

34. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. An Equality Impact Assessment was undertaken prior to consultation and has been reviewed in May 2026. The assessment concluded that that a higher proportion of young adult males (18-24) currently receive Penalty Notices / PNDs, therefore it is envisaged that any expansion to Penalty Notices will likely broadly affect the same group. This will result in those who accept a PND avoiding prosecution through the courts, which can be a lengthy process involving multiple appearances before the court and it is therefore envisaged that this will have a positive impact. The Department also met with the Equality Commission to discuss the proposals and provided the Equality Impact Assessment for review. The Commission confirmed that the Department had followed the correct approach.

Regulatory Impact

35. The proposed statutory rule will not affect any law-abiding citizens or businesses. The voluntary sector and charities should not be affected as a result of the rule being implemented. The main stakeholders affected will be those public bodies implementing and enforcing the rule. They are supportive of these changes. A full Regulatory Impact was not, therefore, considered necessary.

Rural Needs Impact

36. A Rural Needs Impact Assessment was undertaken prior to consultation and has been reviewed in April 2026. The proposals will impact equally on all sections of the population in Northern Ireland including those living in rural areas. Whether an individual lives in an urban or rural area will be irrelevant in terms of the effect of these proposals. As the proposals seek to divert more cases involving low-level offending behaviour away from magistrates' courts, the Department anticipates that there may be a positive impact on those living in rural areas. Cases impacted by the proposals will therefore not require a court hearing and there will be no requirement for those involved in those cases, whether as a victim, witness, or suspect, to travel to attend court thus saving time and travelling costs.

Data Protection Impact

37. Officials submitted a Data Protection Screening Template to the DOJ DPO who advised that full Data Protection Impact Assessment was not required.

Child Rights Impact

38. A child rights impact assessment was screened out as the proposed measures will only directly affect citizens over 18 years of age.

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Position in Great Britain (if appropriate).

39. The position in Great Britain is broadly similar in approach to the proposed changes, with each Jurisdiction using their own equivalent measures to Penalty Notices to deal with low level first time/non-habitual offenders. From the wider context perspective, in his independent review of the criminal courts in England and Wales, Sir Brian Leveson recommends a significant expansion in the use of Out of Court Resolutions (referred to as 'Out of Court Disposals' in Northern Ireland) as a central measure to reduce demand on the criminal courts and stabilise a system at risk of collapse. Sir Brian Leveson argues that Out of Court Resolutions offer a faster, more proportionate and cost-effective response to low-level offending, while also improving victim satisfaction and creating opportunities for early rehabilitation.

Any other information

40. No other Information applicable.

Proposed timing of consideration of the SL1

41. The SL1 was initially submitted to the Committee in accordance with the minimum four-week timeframe. The Committee considered the SL1 on ***2 July 2026.***

Proposed Operational Date

42. It is proposed that the rule will come into operation on 1 February 2027. The draft of the proposed Statutory Rule and Explanatory Memorandum are attached, and you will wish to bring this matter to the attention of the Committee for Justice.

Yours sincerely,

[redacted]

Fiona Scullion
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