

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

www.justice-ni.gov.uk

Minister's Office
Castle Buildings Block C
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

JCP\26\138

Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

17 June 2026

Dear Kathy,

**INFORMATION COMMISSIONER'S OFFICE - CRIMINAL JUSTICE (SENTENCING
ETC) BILL**

Thank you for your letter of 5th June with which you forwarded a written submission from the Information Commissioner's Office (ICO) on the Criminal Justice (Sentencing Etc) Bill with a request that the Department respond to the points raised.

Please see the Department's response below.

The ICO's submission

The ICO's views are summarised at pages 2 and 3 of their submission where they say:

"Our submission highlights two overarching data protection considerations for the Committee's attention.

"First, the Bill is likely to significantly increase the volume, scope and duration of offender personal data processed across the justice system, including through expanded community orders, enhanced sentencing explanations and retrospective sentence review mechanisms. While systems, governance arrangements and data-sharing frameworks are already in place to support

existing processing, the Committee may wish to assure itself that these arrangements remain fit for purpose in light of this expansion — including whether oversight, guidance, resourcing and safeguards are sufficient and consistently applied across all bodies involved.

“Second, the Bill is also likely to result in a substantial increase in the collection, recording and disclosure of data about victims, including special category data and, in some cases, data relating to children. Given the sensitivity of this information and the potential risks associated with identification or re-identification, we recommend that the Committee satisfy itself that:

- any disclosure of victim data will be at a sufficiently aggregated and proportionate level to avoid direct or indirect identification;
- any new or adapted systems required to collect, manage or disclose this data are robust, secure and subject to appropriate governance and oversight, including protections against accidental or malicious breaches; and
- the Department’s assessment that a Data Protection Impact Assessment (DPIA) was not required remains appropriate, given the scale, sensitivity and potential public visibility of the processing envisaged.”

The submission goes on to detail the clauses of the Bill which the ICO considers may have data processing implications.

Department’s response

Provisions about community requirements

As the provisions about community requirements mirror existing community sentence requirements it is the Department’s view that these provisions will not necessitate the processing of new types of data. It is accepted that the information provided to PBNI may, as a result of implementation of these provisions, result in larger numbers of offenders being referred to PBNI. Offenders’ data processed by PBNI and any other agencies involved in the provision of community requirements will be subject to existing data protection policies within those agencies. It is considered that any additional cases

referred to PBNl and data processing associated with these is justified in terms of the prosecution and punishment of offences.

The Department does not consider that any expansion of the use of community requirements will lead to an increase in the duration of data collection related to suspended sentences and community orders, however, data processing implications of these provisions will remain subject to review.

Provisions about the duty to give reasons when determining a tariff

The Department does not consider that the introduction of a duty to give reasons when determining a tariff will lead to an expansion in the volume and scope of offender personal data processed in connection with sentencing. The provisions of the bill formalise current practice in the higher courts and is not expected to lead to any change to the processing of personal data. The Department will continue to monitor this in conjunction with the Lady Chief Justice's Office.

The extension of the application of arrangements for the review of unduly lenient sentences

As with the provisions about community requirements, the extension of the application of arrangements for the review of unduly lenient sentences will not introduce the processing of any new types of data. It is anticipated that very small numbers of additional referrals will be made. At present the average number of referrals per year amount to around 5 or 6. It is projected that the extension of the arrangements may result in up to a 50% increase in these numbers.

No new evidence is examined as part of an unduly lenient sentence referral. Accordingly the range and sensitivity of personal data re examined as part of that process is unlikely to increase as a result of these changes.

As the process for unduly lenient referrals will remain unchanged the Department does not consider that current arrangements will need to be updated to ensure the lawful,

proportionate and secure handling of personal data under the expanded scheme, however this will be kept under review.

Charlotte's Law

Any disclosure made under Charlotte's Law will be made to the Department. As the offender will be under the care of NIPS at the point of disclosure it is not considered that the Department will be required to process new personal data relating to the prisoner.

Any potentially sensitive third party or victim adjacent information revealed connected to victims' remains in any disclosure will be treated in accordance with the Department's data protection policies which will be kept under review so that any necessary updating is identified and actioned should any issues arise.

Any regulations made by the Department governing the form and manner of disclosures will be subject to data protection considerations during their development.

A new offence of assaulting a public worker

The ICO submission raises concerns about the risk of third party disclosure including the possibility that media reporting of court proceedings may identify victims through contextual information. ICO asks how DOJ has assessed and will mitigate the risks of indirect or mosaic identification.

As the Committee is aware, all adult criminal proceedings are conducted in public and may be reported upon unless a reporting restriction is imposed by the court. The fact that the offence was committed against the victim whilst they were working would typically be a pertinent factor which would form part of the prosecution case at present. Current sentencing guidelines specify as an aggravating factor that the offence occurred in the victim's workplace. It is therefore not considered that this new offence will alter the information which typically is revealed over the course of a prosecution.

The victim is the primary witness who must give evidence to substantiate the prosecution. Except for children and victims of rape and other serious sexual offences, whose identity generally must not be reported, the victim's identity does not enjoy any protection unless a reporting restriction is imposed by the court – as often happens to protect vulnerable

witnesses. Where a reporting restriction is imposed the nature of any reporting would be a matter for the court and may constitute contempt, for which there are criminal penalties.

As outlined above, the Department does not anticipate that the new offence will result in any new detailed information being made public. Police officer victims have been identified by ICO as victims of particular concern in this regard. It should be noted, however, that the new offence of assaulting a public worker will replace existing offences of assaulting a police officer, assaulting an ambulance worker and assaulting a Fire and Rescue services officer. It is therefore the Department's view that this new, more general, offence reduces the visibility of the particular occupation of the victim.

It is anticipated that there may be a desire on the part of the victim representatives to capture data illustrating the prevalence of offending against their members. It is also likely that the criminal justice system will seek the capability to record certain categories of victims' occupations for statistical purposes. In working to develop data sets for recording and disclosure purposes the Department will ensure that occupation categories are defined at a sufficiently high level to protect individuals' privacy.

Given that each of the criminal justice agencies is required to comply with data protection laws and maintains its own data protection policies, the Department does not consider it necessary to develop operational guidance to ensure that any disclosure of public sector worker or victim data in sentencing remarks, court listings or other related documentation is carried out in a manner that minimises the risk of inadvertent identification or disclosure of personal information that is not necessary for the purposes of transparency or administration of justice.

Sentencing aggravations for assault on public workers, protected characteristic groups, and vulnerable victims

The Bill allows for these provisions to be commenced by way of a Departmental order. This is to allow time for any necessary operational preparations for implementation to be worked through with the key stakeholders who will be responsible for collecting and processing the information needed to give effect to these provisions.

As the information is already data that is processed in the investigation, prosecution and sentencing of offences under existing practice it is not clear at this stage whether any new data fields or categories will be introduced or whether existing forms etc will require modification in terms of data capture. It may be that reference to the relevant new provision is the only new information that needs to be recorded. We will remain in contact with ICO as the operational preparation proceeds and will work to ensure that no information above and beyond that which is required for the purposes of the criminal law is processed, or, where any change is necessary, that any essential upgrades are considered.

As regards victim vulnerability or the fact that the victim is a public worker, current sentencing guidance directs the court to treat the fact that the victim was a vulnerable person or a public servant as aggravating factors. The creation of these new provisions effectively places into legislation the current practice followed in investigations, prosecutions and sentencing.

It is anticipated that, in relation to the new duty on the court to record the sentence in such a way as to show the sentence has been aggravated, the court will record outcomes with reference to the relevant clause number of the bill, rather than recording the particular vulnerability or occupation of the victim.

In relation to offences aggravated by hostility, it is already a statutory requirement for the court to treat offences aggravated by hostility on the basis of any of the four characteristics set out in clause 33 of the Bill as more serious and to state that the offence was so aggravated in open court, under The Criminal Justice (No. 2) (Northern Ireland) Order 2004 . Clause 33 provides for the hate crime element of any crime to be formally recorded from investigation through prosecution and sentencing. Clause 35 provides the Department with the power to add further protected characteristics by way of secondary legislation however at present, the protected characteristics that will be recorded remain the same as within the 2004 Order.

Special category data

Victims with protected characteristics (Aggravation by hostility)

PSNI currently record statutory protected characteristics relating to race, religion, disability and sexual orientation in relation to criminal offences, and also record information on transgender crime and that relating to sectarian motivated crimes. As noted, the Bill at present includes only those characteristics currently captured by the Criminal Justice (No. 2) (Northern Ireland) Order 2004. Provision has been made that further characteristics can be added via secondary legislation at a later date. This will be subject to further data protection consideration if/when that secondary legislation is taken forward.

Under the existing hate crime provisions the courts are required to treat aggravation by hostility as a factor that increases the seriousness of the offence and to state in open court that the offence was so aggravated. The Bill enhances existing legislation by requiring the court also to make reference to the types of hostility evidenced and to record the sentence in such a way to show the offence is so aggravated.

At present to satisfy the existing legislation the courts need to hear evidence of the hostility alleged. Courts are public arenas and, unless a reporting restriction is imposed, the details of any prosecution can be reported in the media. Accordingly, it is not anticipated that the new provisions will lead to increased identification of victims' special category data.

Vulnerable victims

Where a victim is considered to be vulnerable this information will currently form part of the evidence presented to the court. Unlike the hostility aggravator the Bill does not impose a requirement for the court to state the vulnerability alleged when stating that the offence has been aggravated by reason of vulnerability, so it is not anticipated that processing of additional special category data of vulnerable victims will be required when it comes to implementation of these provisions.

The Department is conscious of the need to ensure that any data collected is limited to what is necessary and proportionate for the operation of the statute and will continue to work with criminal justice partners and liaise with ICO to ensure that any new structured data fields, systems or information flows to support the identification and recording of aggravating factors or other processes will be adapted to collect, verify and record these special category data items if necessary.

Data minimisation

The Department is aware of the requirement to process only such personal data for law enforcement purposes as are adequate, relevant and not excessive. Each agency involved applies its own data protection policies with data minimisation as one of the key principles. It will be a matter for each agency, exercising its expertise in the investigation, prosecution and sentencing process to ensure that only the information which is required is processed.

It should be noted that it is not anticipated that any information in excess of that currently sought in the course of criminal investigations, prosecutions and sentencing will be processed.

Disclosure, fairness and proportionality

Under the proposed new model, offences aggravated by hostility will be indefinitely disclosed on AccessNI Standard and Enhanced Disclosure Certificates as such offences will be regarded as non-filterable under the Police Act 1997. It is important to note that similar arrangements apply to the existing enhanced sentencing regime for hate crimes under the Criminal Justice (No.2) (Northern Ireland) Order 2004. It is accepted, given that the new process intends to more accurately record hate crime offences on conviction, that there may well be an increase in individuals convicted as such and therefore subject to indefinite disclosure.

However, this is balanced against (i) the need to reflect that the criminal justice system is taking and tackling hate crime more seriously, (ii) reassuring our communities that crimes against them are being taken seriously and (iii) the fact that the aggravation appearing

on the defendant's record will allow the individual access to appropriate and relevant rehabilitation programmes.

It should be recognised that if the offence is spent under The Rehabilitation of Offenders (NI) Order 1978 this allows an applicant to raise an appeal with the Independent Reviewer for Criminal Record Certificates (IR)¹ who can remove any spent conviction, providing the removal of such doesn't undermine safeguarding or protection of children and/or vulnerable adults, or the risk of harm to the public.

It is also proposed that the provisions of The Rehabilitation of Offenders (NI) Order 1978 will apply to AccessNI Basic Disclosure Certificates, therefore such offences aggravated by hostility will be disclosed until they are considered spent within this Order. The nature of the disposal of the offence will determine the rehabilitation period. This is also similar to the existing enhanced sentencing arrangements under the Criminal Justice (No.2) (Northern Ireland) Order 2004.

Children's data

As stated above, it is not intended to record as part of sentences aggravated by reason of the vulnerability of the victim any details about child victims other than the fact that they are vulnerable. Where a child is the victim of an offence at present this information forms part of the criminal investigation file and accordingly no new information is expected to be processed as a result of the vulnerable victim aggravator.

Any information gathered and processed in relation to criminal proceedings will be subject to existing data protection policies operated by criminal justice agencies as is the case at present. No new agencies will be required to process children's data as a result of the bill's provisions.

Conclusion

It is the Department's view that the provisions of the Sentencing Bill will not necessitate the collection and processing of data which is not currently collected and processed in

¹ The Independent Reviewer (IR) of Criminal Record Certificates is a statutory role introduced through Schedule 4 of the Justice Act (NI) 2015.

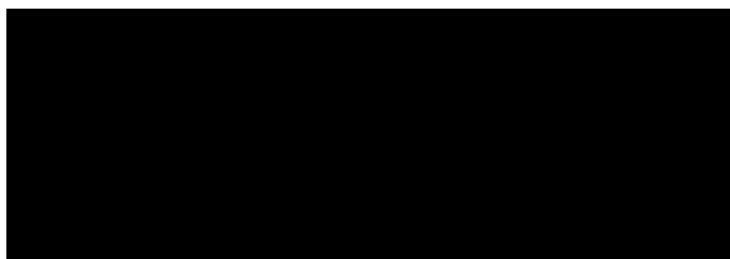
connection with existing criminal proceedings. Any increase in volumes of data processed will be dependent upon the volume of offences investigated.

The investigation into criminal offences requires the processing of significant volumes of data relating to the offence the offender the victim or victims and witnesses. Each of the criminal justice agencies involved maintains its own data protection policies which will continue to apply and be revised in line with any changes that are required.

The Department is conscious of the data protection concerns raised by ICO in its submission and has undertaken to continue to liaise with ICO (as it has done both during policy development of particular aspects of the bill and, prior to and since introduction, on the bill as a whole) as preparations for implementation of the bill proceeds and arrangements for the formal recording of certain data as required by the provisions of the bill are taken forward.

It is the Department's intention to keep its decision whether an impact assessment is required under review during the implementation phase when it will become clear what operational changes need to be made in order to implement the various provisions of the bill.

We trust this information is of assistance to the Committee.



DALO



**Northern Ireland Assembly
Committee for Justice**

Fiona Scullion
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

05 June 2026

Dear Fiona

**INFORMATION COMMISSIONERS OFFICE – CRIMINAL JUSTICE (SENTENCING
ETC) BILL**

At its meeting on 21 May 2026, the Committee Justice considered a written submission from the Information Commissioners Office (ICO) on the Criminal Justice (Sentencing etc) Bill.

The ICO has highlighted a number of points that it suggests the Committee may wish to consider further. The Committee agreed to forward the submission by the ICO to the Department to request a response on the points raised..

I would be grateful if the Committee could receive a response by 19 June 2026.

Yours sincerely

Kathy O'Hanlon

**Kathy O'Hanlon
Clerk to the Committee for Justice**

Enc.

Room 345, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX
Telephone: (028) 905 21033

E-mail: committee.justice@niassembly.gov.uk