

## Advice to Government: Justice Bill – Amendments

June 2025

### Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in Northern Ireland (NI). Under Articles 7(2) and (3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. Under Article 7(4), NICCY has a statutory duty to advise any relevant authority on matters concerning the rights or best interests of children and young persons.

The Commissioner’s remit includes children and young people up to 18 years, or 21 years if the young person is disabled or is care experienced. In carrying out his functions, the Commissioner’s paramount consideration is the rights of the child or young person, having particular regard to their wishes and feelings. In exercising his functions, the Commissioner has regard to all relevant provisions of the United Nations Convention on the Rights of the Child (UNCRC).

NICCY welcomes the opportunity to provide further written evidence to the Committee for Justice (the Committee) on the current proposed and published amendments to the Justice Bill. Should the Committee require any further information on any of the matters raised in this submission, NICCY is more than happy to facilitate this either in writing, or in further oral evidence sessions.

### *Amendment 1 – Biometrics*

NICCY have, via letter, provided initial understanding to the Committee relation to this proposed amendment but wish to highlight some areas to Members as follows:

It is our understanding that Clause 33 inserts a new section into Part 1, adding in new schedules and new Article 53 of PACE Northern Ireland (NI) 1989. In effect, this amendment further amends PACE NI 1989 (specifically Part 6), adding in powers particular to the photographing of certain persons at a police station – Clause 23A. We note that there is no age range included here, so it is our assumption is that this could apply to a child 10 and over – the minimum age of criminal responsibility. Clarity would be welcome on this, and if at any stage, the Police Service of Northern Ireland (PSNI) would collect photographs of anyone under the age of criminal responsibility and how they are retained, either as victims, witnesses, suspects or otherwise.

As we have previously raised, there is limited detail available on how permission is given to a police officer from a child in a case where they must be recalled to the station for the purposes of photographing or what would happen if a person could not make a specific date. I am aware that the Committee did raise a query relating to this to the Department of Justice (the Department) at the evidence session on the 16<sup>th</sup> January 2025 and look forward to considering the response.

I also wish to reiterate that we do consider the taking of photographs as the taking of biometric data and content that there is an argument to suggest that this is already current practice and understanding.

Firstly, through the systems in place used by the PSNI, it is our understanding that there are processes in place to ‘translate’ photographs taken into codes. The Police National Database (PND) holds custody images, and ‘offers a capability for the Police Service to share, access and search local information electronically, overcoming artificial geographical and jurisdictional boundaries’, and as of 2019, the Police National Database contained almost 18.5 million facial images.<sup>1</sup> Facial images are also taken by the PSNI in respect to the suspect being in custody. According to the NI Policing Board Human Rights Reviewer (NIPB), the process works as follows:

*‘Like fingerprints, custody images are taken in the custody suite and can be added to a database; fingerprints are recovered from crime scenes just as images can be recovered from CCTV and photographs and fingerprints are added to a searchable database and crime scene marks searched against this database; similarly custody photographs can be loaded to a searchable database and images recovered from crime scenes can be searched against this database. Both fingerprints and facial images are subjected to computer generated filters to transform these images into numerical expressions that can be compared to determine their similarity... Once the image has been captured it is loaded into a facial matching system. This system will take the image and transform the image into a series of numerical expressions.’*

Their report also states that the PND consists of a large database of custody images (alongside other biometric identifiers), including those added by PSNI.<sup>2</sup> The Department have stated that it is their understanding that the ‘PSNI’s policy would be to delete photographs at the same time as deleting fingerprints and DNA’.<sup>3</sup>

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<sup>1</sup> NI Policing Board, ‘Human Rights Review of Privacy and Policing’ (2022) (Available at: [Human Rights Review of Privacy and Policing](#), accessed on 2.4.25), p.29

<sup>2</sup> Ibid., p. 76

<sup>3</sup> Committee for Justice, ‘Official Report: Minutes of Evidence, Thursday, 16 January 2025’ (Available at: [Minutes Of Evidence Report](#), accessed on 2.4.25)

Secondly, the use and potential use of facial recognition technology seems to extract biometrics from images. In the NIPB Human Rights Review of Privacy and Policing, the report outlines matters relating to live facial recognition systems (LFR) which is an example of facial recognition technology that processes biometric data, a particular type of data that was given specific definition within the Data Protection Act 2018. The use of LFR is contentious and has been subject to a High Court and subsequent Court of Appeal case in 2020. The report stated that in order to determine a match, biometric templates are extracted from the scanned faces of individuals.

The NIPB found that the PSNI does not currently operate a Facial Identification System but ‘fully recognises the value this could bring to investigations and public safety’. The PSNI stated that they were ‘closely engaged with the Home Office Biometrics Programme who have plans to develop a National Facial Identification system. The Service will be invited to sit on the Home Office Biometrics Facial Matching Project Board, charged with delivering a National Facial Identification system and will contribute to its development’ relating to *retrospective* facial images, not those that are live, which were subject to the original court case. As of March 2023, the PSNI are currently developing Guidance on Usage of Retrospective PND Facial Searching, and the Human Rights Advisor has seen the draft guidance and provided feedback.

We further note the Recommendation 15 on Privacy and Surveillance by the NI Policing Board’s Human Rights Reviewer through their ‘Five Year Annual Review’ 2024 that:

*As reported in recent Human Rights Annual Reports, the PSNI continue to hold biometric data (fingerprints, photographs, and DNA profiles) on hundreds of thousands of people in Northern Ireland unlawfully and has been doing so since 2008. This is despite the fact that the Assembly drafted legislation to deal with this issue a few years ago (although never implemented). The PSNI, supported by the Policing Board, should request that the assembly legislate urgently on this issue...*

*...Biometrics held by PSNI include not just fingerprints and DNA but isometric technology also makes a person’s face machine-readable.<sup>4</sup>*

Thirdly, in the *Gaughran vs UK* case, the applicant alleged under Article 8 of the Convention that the ‘indefinite retention of his DNA profile, fingerprints and photograph’ in accordance with the blanket policy of retention of personal data amounted to a disproportionate interference with the right to respect for his private and family life. The Court found that the

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<sup>4</sup> See: NI Policing Board, ‘Human Rights: Five Year Review’ (2025) (Available at: [Human Rights 5 Year Review - Final.pdf](#), accessed on 30.6.24), p. 215

indiscriminate nature of the powers of retention of the DNA profile, fingerprints and photograph of the applicant as person convicted of an offence, even if spent, without reference to the seriousness of the offence or the need for indefinite retention and in the absence of any real possibility of review, failed to strike a fair balance between the competing public and private interests. Despite the Court finding that the State retained a slightly wider margin of appreciation in respect of the retention of fingerprints and photographs, that widened margin is not sufficient for it to conclude that the retention of such data could be proportionate in the circumstances, which include the lack of any relevant safeguards including the absence of any real review.<sup>5</sup>

We welcome that the Department have stated that a body of work will be commissioned from colleagues in the Departmental Solicitor's Office (DSO) on the same detailed competence advice, including human rights compliance and Windsor Framework considerations and that this work will be conducted in parallel with the Committee's call for evidence, and we look forward to considering the outcome of this work in due course. We encourage the Department to conduct a Child Right's Impact Assessment (CRIA) alongside the, or be included in, the DSOs work (on the amendments, and the whole Justice Bill as previously advised).

Therefore, we contend that for a number of reasons that photographs could already considered in policy and practice by agencies as a person's biometric information, given the findings of the judgement, the existence and contents of PACE Code D, the scope of Part 1 of the Justice Bill, the Human Rights Review Reports and the inclusion of powers for the PSNI proposed in this amendment. We also note the comments of the NI Policing Board's Human Rights Advisor to the Committee on Thursday 12<sup>th</sup> June 2025 relating to this matter, alongside concerns raised about the potential future use of technology in NI.

Members of the Committee have previously raised questions over the recall powers proposed under the amendment. NICCY would welcome further information on the process around recalling children and young people would operate, should they, for example, be in school or education at the time chosen, their proximity to the nearest police station and having to travel, the cost and accessibility of said travel and how this would be communicated to them in a child-friendly manner.

Aside from the above, NICCY has no further comment on the text of the amendments at this time, given their operational content.

### *Amendment 2 – Accredited providers of restorative justice services*

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<sup>5</sup> See: [Gaughran v. The United Kingdom \(Application no. 45245/15\) - Police and Human Rights Resources](#)

The Committee will be aware that the UN Committee on the Rights of the Child published its General Comment 24 on children's rights in the child justice system in 2019. Within this, the Committee took note of the different examples of restorative processes including mediation, conferencing, conciliation and sentencing circles. It found that a variety of community-based programmes have been developed, such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims. It found that a wide range of experience with the use and implementation of non-custodial measures, including restorative justice measures, exists, finding that States parties should benefit from this experience, and develop and implement such measures by adjusting them to their own culture and tradition.

The UN Committee also found that restorative justice responses are often achievable through customary, indigenous or other non-State justice systems, and may provide opportunities for learning for the formal child justice system. Furthermore, recognition of such justice systems can contribute to increased respect for the traditions of indigenous societies, which could have benefits for indigenous children. Interventions, strategies and reforms should be designed for specific contexts and the process should be driven by national actors.<sup>6</sup>

NICCY notes that restorative approaches and practices such as youth conferencing has been embedded in NI's youth justice system for over 20 years, and that the majority of young people within the criminal justice system are referred through diversionary disposals, earlier interventions, as opposed to receiving custodial sentences. There has been a concerted effort to reduce the number of children and young people in custody in NI, that there is a balance the needs of the victim and the young offender and taking steps to ensure the youth justice system is more child's rights compliant. Restorative justice must be victim centred, and that there are positive outcomes for victims of crime.

It is our understanding that this amendment is proposed for inclusion in the Bill due to an oversight during the transfer of policing, security and justice functions from Westminster to NI (i.e. a transfer from the Secretary of State) and also to reflect recent work in progress around restorative justice in the justice system, including associated requirements and a framework for providers.

NICCY welcomes the Department's intention to expand the number of individuals and organisations in restorative justice and practice. We note that restorative practices and approaches have been adopted in NI across various statutory organisations including the Youth Justice Agency and the PSNI, non-statutory such as Extern, NIACRO and Victim

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<sup>6</sup> UN Committee on the Rights of the Child, 'General Comment 24 on children's rights in the child justice system' (2019) (Available at: [General comment No. 24 \(2019\) on children's rights in the child justice system | OHCHR](#), accessed on 1.4.25), p.3, 12, and 17

Support NI, as well as those outside of the ‘justice’ remit, including in some schools, education facilities.

We note that the amendment provides for the Criminal Justice Inspectorate NI (CJINI) under Clause 26A(2) and (3) and note that CJINI have previously reported on aspects of restorative justice within the system and community based restorative justice accredited schemes.<sup>7</sup> It is unclear what specific role CJINI will have in the accreditation of schemes, if any, of if this decision making will rest solely in the Department of Justice and the Interim Protocol Lead.

The Committee will be aware of the recommendation that was made in the Fresh Start Panel Report on the Disbandment of Paramilitary Groups in NI, recognising that restorative justice is an important part of both building confidence in the justice system and delivering better outcomes for communities. A9 stated that:

*The Executive should put in place a dedicated fund for restorative justice initiatives to provide enhanced levels of resource over longer periods of time to deliver positive outcomes for individuals and communities. This should include resourcing the proposal for a centre of restorative excellence.<sup>8</sup>*

The NI Executive agreed an action plan further to Fresh Start – the ‘Tackling Paramilitary Activity, Criminality and Organised Crime: Executive Action Plan’, which agreed that the Department would carry out a feasibility study and consider best options for a Centre of Restorative Excellence (CORE) in NI, concluding in 2018, that it should be progressed at the earliest possible opportunity.<sup>9</sup> Furthermore, the Executive agreed that it would put in place a dedicated fund for restorative justice initiatives to provide enhanced levels of resource over longer periods of time to deliver positive outcomes for individuals and communities. A call for a CORE, alongside six other recommendations relating to restorative justice, was also made in Judge Marrinan’s independent review of Hate Crime legislation in NI, through Recommendation 21.<sup>10</sup> Most recently, the absence of a CORE was noted by the Independent Reporting Commission in their Seventh Report, expressing regret at ‘the time it has taken for

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<sup>7</sup> For example: [PBNi Report](#) (2010) [Layout 1](#) (2014) [Equal Partners? An inspection of the voluntary, community and social enterprise sector’s engagement with the criminal justice system in Northern Ireland](#). (2019) [Resolve Restorative Justice Scheme - a pre-accreditation inspection report](#). (2016) [CJINI - Criminal Justice Inspection Northern Ireland - Review of Community Restorative Justice Ireland and its accredited schemes](#) (2023)

<sup>8</sup> Alderdice, L. et al, ‘The Fresh Start Panel Report on the Disbandment of Paramilitary Groups in Northern Ireland’ (2016) (Available at: [The Fresh Start Panel report on the Disbandment of Paramilitary Groups in Northern Ireland](#), accessed on 2.4.25), p. 33

<sup>9</sup> NI Executive, ‘Tackling Paramilitary Activity, Criminality and Organised Crime: Executive Action Plan’ (2016) (Available at: [Tackling Paramilitary Activity, Criminality and Organised Crime - Executive Action Plan](#), accessed on 2.4.25) p.9

<sup>10</sup> Department of Justice, ‘Hate Crime legislation in Northern Ireland: Independent Review’ (Available at: [hate-crime-review.pdf](#), accessed on 1.4.25), pp. 434-439

work to be progressed in this area and urge other Departments and agencies in areas such as communities, education, housing and others to support restorative practice through the development of this centre'.<sup>11</sup>

It is our understanding that the CORE Working Group within the Department has been re-established (further being 'paused' due to the pandemic) and the work relating to this will be taken forward in 'parallel with the work to deliver an Adult Restorative Justice Strategy'.<sup>12</sup> NICCY would welcome any further information relating to this work and how it could and does impact on community based restorative justice for children and young people which is already embedded within the youth justice system. We are aware that following the Adult Strategy in 2022, the 2023 Restorative Justice Protocol was published, which included identification of accreditation processes to be followed for restorative justice organisations to work in partnership with the criminal justice system. We understand that the Department is working on a new 'Adult Restorative Justice Practice Standards and Accreditation Framework' and request information relating to any impact this would have on the operation of youth restorative justice practice standards, if any.

### *Amendment 3 – Repeal of public order offences – Vagrancy Act 1824 and 1847*

NICCY welcome the draft amendments submitted by the Department to the Committee on the 4<sup>th</sup> December 2024. NICCY provided advice to government on consultation on the Repeal of the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847, which is available [here](#). In this response, we outlined a number of key children's rights relating to the provisions, as well as those which go beyond the main aims of repealing provisions within two Vagrancy Acts. This includes the tackling the root causes of our housing crisis, including unaffordability, insecurity of tenure, poor housing conditions, empty homes and homelessness, and adequate government strategies and resources to do so.

We note the minimal use of the current legal powers under this legislation and do not consider any negative impact that the repeal of these provisions would have. NICCY further notes the Committee's concern on organised begging, particularly on those victims of exploitation, human trafficking and coercion. NICCY does not believe that the repeal amendments would further the harm that comes to victims and encourages Government to ensure that these criminal and harmful acts do not occur.

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<sup>11</sup> Independent Reporting Commission, 'Seventh Report' (2025) (Available at: [IRC Seventh Report.pdf](#), accessed on 11.4.25), p.145

<sup>12</sup> Department of Justice, 'Adult Restorative Justice Strategy for Northern Ireland: Restoring Relationships, Redressing Harm 2022 – 2027' (2022) (Available at: [Adult restorative justice strategy for northern ireland](#), accessed on 2.4.25), p.47



We do not intend to repeat our recommendations to the Committee at this time, however we wish to draw attention to our ask that a CRIA is undertaken. We have made similar calls to the Committee relating to the Justice Bill *in totalis* and consider that a CRIA should be undertaken on the amendments too, including this one. This would allow the Department and the Committee to be able to assess if there are legislative gaps pertaining to children and young people and that children and young people's rights are being taken into consideration and avoid/mitigate any negative impacts at the earliest possible stage. NICCY are keen to see this incorporated into practice and are content to support/advise on this.


#### *Amendment 4 – Serious Organised Crime Groups*

New Clause 19A on serious organised crime groups (OCG) creates two new offences - the participating in criminal activities and the direction of activities of an OCG, and sets out the new definitions of what an OCG means:

We are aware that the Independent Reporting Commission, amongst others, have called for the introduction of such new offences on OCGs in NI for some time. We encourage the Committee to scope out the impact in other jurisdictions, across England, Wales, Scotland and the Republic of Ireland that have introduced similar laws to tackle serious organised crime, to understand how these have worked, and if there have been any unintended consequences or identifiable gaps. The Committee could consider scoping out of how 'well' the relevant offences are 'working', with specific focus on the numbers of children and young people involved. We also query as to why it appears the Department are seeking to introduce different conviction rates from other jurisdictions in this amendment, and how they envisage these new offences working for cross-border organised crime, as well as in the context of human trafficking and exploitation. We further query what the evidentiary test for participation and also for directing would be considered as.

NICCY wishes to raise concern to the Committee on the potential of these offences to be applied to and issued to children and young people over the age of 10 years old, given the low age of criminal responsibility in NI and reiterates calls for this to be increased to 16 years old.

Furthermore, we wish to raise with the Committee the nature of Child Criminal Exploitation (CCE) for their consideration in the context of these proposed amendments. We draw the Committee's attention to NICCY's published formal advice to government concerning the criminal coercion and exploitation of children by armed groups and gangs. This advice was informed by children's rights, the experiences of children themselves and their





representatives and learning from other jurisdictions.<sup>13</sup> The advice called for a unified strategic response to protect children from harm including abuse, violence, coercion and exploitation by organised gangs and groups. Government response must be embedded in safeguarding and children in need processes and implement the following recommendations:

- Raise awareness of child abuse and exploitation in this context: and build confidence in the role of statutory agencies to support and protect children, families and communities;
- Prevent harm and abuse to children and young people: through sustained activity to reduce community vulnerability to violence and exploitation, including those actions set out in the Action Plan on Tackling Paramilitary Activity, Criminality and Organised Crime;
- Protect and intervene where children are abused and exploited: ensuring that robust safeguarding procedures are in place and that agencies are working together to protect children and support their recovery. This will require the ongoing involvement of children's social care in all aspects of the strategic response and the review of key guidance and procedures, including co-operating to Safeguard Children and Young People and Working Arrangements for the Welfare and Safeguarding and Trafficking and Modern Slavery procedures to make sure that consistent definitions and agreed referral and response pathways to all forms of harm, including criminal exploitation, are in place; and
- Pursue those who seek to harm, abuse and exploit children: through effective identification, disruption, investigation and prosecution of offenders. This will require the review of available criminal offences and arrangements to assess where these and approaches to investigation and prosecution may need strengthened.

We also urge the Committee to consider the March 2024 'Jay Review' and associated recommendations, the cross Departmental 'Child Criminal Exploitation Action Plan' published in September 2024, and the provisions contained within the Crime and Policing Bill in Westminster, 'Chapter 2: Child Criminal Exploitation' as part of their scrutiny of this amendment, and ensure there are adequate safeguards against the further criminalisation of children and young people who have been coerced and exploited.<sup>14</sup>

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<sup>13</sup> NICCY, 'Child Criminal Exploitation – Safeguarding Children and Young People from Abuse and Exploitation' (2021) (Available at: [Advice to Government - Child Criminal Exploitation - Safeguarding Children and Young People from Abuse and Exploitation. - Niccy](#), accessed on 2.5.25)

<sup>14</sup> See: Action for Children, 'Shattered lives, stolen futures: The Jay Review of Criminally Exploited Children' (2024) (Available at: [The Jay Review of Criminally Exploited Children | Action For Children](#)) and Department of Health, Justice and Education, 'Child Criminal Exploitation (CCE) Action Plan' (2024) (Available at: [Child Criminal Exploitation \(CCE\) Action Plan | Department of Health](#))

In order to be effective, response to the abuse and exploitation of children and young people must: reflect the obligations of the UNCRC; be collaborative across government departments, statutory agencies and voluntary and community organisations; address how such harms to children will be prevented, how young people at risk will be protected and the steps that will be taken to disrupt and pursue perpetrators. We note that this framing of prevention, protection and pursuit reflects NICCY's previous work on government responses to CSE and the structure of NI's Modern Slavery and Human Trafficking Strategy which should also be considered here.<sup>15</sup>

The new offences, particularly those relating to the participation, may impact on children and young people who are coerced and exploited into committing criminal activity. NICCY encourages the Committee to seek clarification on the Department's assessment of this, and how this fits in with the wider strategic approach to tackling CCE in NI and the best interests of the child within the justice system. NICCY notes that within new Clause 19(c), subsection (3)(b) directly references the control of others as part of the offence that has been committed – if Person A direct via 'control of another'. It also outlines actions that would constitute pressure being put on another person. In subsection (3)(a), 'instructing' includes threatening another person and any other means of putting pressure on the other person – therefore control has been established. However, the 'control' reference does not seem to appear in Clause 19(B) relating to the participation offence which we understand could be applied to children and young people over 10 years old who participate in OCG activities, perhaps not adequately reflecting the nature of coercive control and exploitation. We would welcome clarity on this issue and if a further defence may be required to recognise vulnerability of children and young people because of their age.

On this, NICCY are aware that the Department have stated that consideration was given to this to be included, but from talking to operational partners including the PPS, they are of the view that that is already provided for through independent prosecutorial discretion and the common law defence of duress. NICCY questions if the independent prosecutorial discretion and common law defence of duress appropriately covers the criminal coercion of children and young people, and if the requirements to engage, and the limitations of the common law defence of duress, will provide adequate safeguards to protect children and young people. We encourage the Committee to fully consider CCE as part of their scrutiny of this amendment, as well as any implications that the new offence of CCE as outlined in the Crime

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<sup>15</sup> See: NICCY, 'Reviews of CSE Action Plans and First, Second and Third Rounds of CSE Progress Reports' (Available at: <https://www.niccy.org/about-us/our-current-work/high-level-corporate-objectives/children-s-right-to-health-protection-from-violence-or-abuse/child-sexual-exploitation-cse/>, accessed on 30.6.25)

and Policing Bill at Westminster may have. We therefore consider that there may be a need to strengthen a defence available for children and young people who are victims of criminal coercion, and suggest that the Committee consider provisions already in place within the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (NI) 2015, Section 22, including the awareness and use of this defence. Furthermore, Committee could explore whether or not an explicit statutory defence is a more appropriate safeguard for children and young people subject to exploitation.

Finally, NICCY are aware that the Department is undertaking a comprehensive review of strategies and strategic frameworks across the Safer Communities Directorate which impacts on the Organised Crime Strategy and the development of a 'bridging' plan for 2025/2026. NICCY would welcome further information on how children and young people are considered within this, particularly should these new offences be legislated for, and how CCE is considered with it, as well as within Safer Communities.

#### *Amendment 5 – Access NI*

It is NICCYs understanding that new Clause 29A seeks to amend Section 113A of the Police Act 1997 in order to implement the improvement proposals that emanated from the review, which seek to streamline arrangements for the maintenance and ease of understanding of the list and to provide greater clarity in that area of Access NI's work.

NICCY have no particular comment in relation to the review or the proposed amendment, bar the one inconsistency that was highlighted to the Committee by the Department relating to the Disqualification of Caring for Children Regulations (NI) 1986 and 'any offence involving injury or threat of injury to another person'. It is NICCYs understanding that this is an example of where the laws/lists need 'tidying up', removing an inconsistency whereby an offence is to be noted, but practice has become such (due to legislative provision) whereby it is only captured if committed against somebody under the age of 18.

NICCY encourages the Committee to satisfy itself that there will not be any gaps within the removal of the umbrella 'any offence involving injury or threat to another person' and therefore no safeguarding risks identified. We also encourage the Committee to seek assurances that the Department will keep the new specified list under regular review, and that if any issues are raised, necessary changes can be made.

#### *Amendment 6 – Live links in courts and tribunals*

As stated in our first submission on the Bill as introduced, NICCY welcomes the benefits that remote evidence and the use of live link technology has had, particularly for victims and

witnesses. The use of live links in proceedings must never undermine a child's right to a fair trial, and any expansion must be accompanied by strong safeguards, informed consent, and age-appropriate guidance. Appearances before a judge are a vital safeguard for liberty, and care must be taken to ensure children understand and can meaningfully participate in proceedings. They must not become the 'norm.'

It is NICCY's understanding that the proposed amendment, new Clause 5, replaces the temporary provisions contained in the Coronavirus Act 2020 and updates current law and procedures around the use of remote evidence, including an outline of occasions where there would be a statutory presumption for the use of live links. We welcome clarification that existing provision for live links to be used as a 'special measure' is unaffected by the proposed legislation although it could facilitate increased use of Remote Evidence Centres (RECs), which can reduce the risk of re-traumatisation of vulnerable victims and witnesses as well as contribute to improved witness participation in the criminal justice process.

We wish to reiterate our recommendation on the use of live links that guidance and information be presented and available to children and young people to whom this may effect. As the Committee is aware, we have reservations about the use of live links with children and young people. NICCY encourages the Committee to ensure that the appropriate consent mechanisms are in place, and that appropriately reflect the child's right to be heard, under UNCRC Article 12. As previously raised, NICCY recommends the Committee to consider situations that may arise where there are differences in opinion on the suitability of live links for a situation, particularly if a child or vulnerable person does not consent, but the parent/guardian or appropriate adult does and ensure appropriate guidance is available to deal with these types of situations, should they arise. Guidance should be accessible, with children and young people's versions available. We consider that any guidance must have safeguards built in dealing with the intention of the legislation. Guidance from the Court is used to enable the law to be followed – as independent interpreters of the law.

NICCY advises Committee to ensure that live link will not become the 'default' for child defendants or witnesses in the future, only when it is in their best interests with consent, and that all safeguards are in place for those who have any additional needs to have the rights support to participate fully in proceedings. We would further welcome a comprehensive list of authorities in civil or criminal proceedings where the only party in a hearing or application is a public official that Article 6(1) of the amendment applies to.

NICCY takes this opportunity to draw to the Committee's attention the need to progress, as a matter of urgency, a Barnahus for NI, as recommended in the 2019 Gillen Review Report into

the law and procedures in serious sexual offences in NI.<sup>16</sup> In 2022, NICCY published ‘Putting the Child at the Centre - Barnahus (Children’s House) - a one door approach to supporting children who have been sexually abused in Northern Ireland’, which explores developing the Barnahus model as a way to better support child victims of sexual abuse and ensure a higher standard of justice for all those involved in sexual offence cases where there is a child victim.<sup>17</sup> This includes the increased facilitation of remote evidence, including through the Achieving Best Evidence process and RECs. NICCY are more than happy to return to brief Committee on the Gillen Review, and our key recommendations for achieving a Barnahus for NI.

### *Amendment 7 – Rehabilitation of offenders*

It is NICCYs held position that the Rehabilitation of Offenders 1978 (NI) Order must stand alongside the rights standards and safeguards (including in the UNCRC, the ‘Beijing Rules’, the UN Guidelines for the Prevention of Juvenile Delinquency 1990 (the ‘Riyadh Guidelines’), the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 (the ‘Havana Rules’), and the UN Standard Minimum Rules for Non-custodial Measures 1990 (the ‘Tokyo Rules’), the UN Committee on the Rights of the Child’s General Comment 24, and the Youth Justice Review 2011 recommendations), as the legislative instrument providing the opportunity for young people to move away from their past. NICCY has previously stated that the Order is ‘outdated and inefficient’, and we responded to the Department’s consultation in February 2021 outlining our position, a copy of which is available [here](#).

In our response, we raised queries over changes in the types of sentencing that is issued, and that they can be split between custody and community. This can cause confusion with limited understanding of when ‘rehabilitation period’ begins and that there are inconsistencies in disclosures, for example between a probation order and a fine. Finally, we did not agree with the continuation of any sentence over 30 month requires lifetime disclosure with no mechanisms for an individual to apply for their conviction to become ‘spent’. We expressed disappointment that this consultation has not sufficiently addressed the special circumstances for children and recommended that the Department should reconsider these proposals in light of this obligation and make the necessary changes to the

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<sup>16</sup> Department of Justice, ‘Gillen Review Report into the law and procedures in serious sexual offences in NI’ (2019) (Available at: [Gillen Review Report into the law and procedures in serious sexual offences in NI | Department of Justice](#), accessed on 2.5.25), p. 501

<sup>17</sup> See: NICCY, ‘Putting the Child at the Centre – Barnahus (Children’s House) – a one door approach to supporting children who have been sexually abused in Northern Ireland’ (2022) (Available at: [Putting the Child at the Centre - Niccy](#), accessed on 30.6.25)

Rehabilitation of Offenders (NI) Order 1978 to reduce the length of rehabilitation periods for children. This remains NICCY's position.

We also highlighted the need for a fuller reform of the Rehabilitation of Offenders (NI) Order 1978 taking into account the rights and best interests of children and recommended young people who have committed offences in childhood should move into adulthood without a criminal record. The only exceptions should be relating to safeguarding, with young people who have committed pre-defined 'serious' crimes, which should be independently reviewed. We continue to hold that once childhood cautions and minor convictions have become spent, they should very immediately become non-disclosable, on all Access NI Checks including standard and enhanced.

NICCY has already submitted proposals to the Committee to consider regarding the full implementation of Youth Justice Review Recommendation 21 which we continue to support the need for. We reiterate that there is a compelling case for a fuller reform of the Rehabilitation of Offenders (NI) Act 1978 taking into account the rights and best interest of children, as outlined in Recommendation 21 of the Youth Justice Review, 2011 which states:

*21. Policy and legislation relating to the rehabilitation of offenders should be overhauled and reflect the principles of proportionality, transparency and fairness. Specific actions should include:*

*a. diversionary disposals should not attract a criminal record or be subject to employer disclosure;*

*b. young offenders should be allowed to apply for a clean slate at age 18; and*

*c. for those very few young people about whom there are real concerns and where information should be made available for pre-employment checks in the future, a transparent process for disclosure of information, based on a risk assessment and open to challenge, should be established. The decision to disclose and the assessment on which it is based should be regularly reviewed.<sup>18</sup>*

NICCY strongly recommends young people who have committed offences in childhood should move into adulthood without a criminal record. The only exceptions should be with young people who have committed pre-defined 'serious' crimes, which should be independently reviewed on a case-by-case basis.

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<sup>18</sup> Department of Justice, 'A Review of the Youth Justice System in Northern Ireland' (2011) (Available at: [A review of the youth justice system in Northern Ireland. - Drugs and Alcohol](#), accessed on 30.6.25)

NICCY does not support any rehabilitation periods to ‘apply’ to children and young people who have been through a diversionary disposal, should this apply. The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for certain purposes, they should not be viewed as criminal convictions or result in criminal records.

There is specific mention of fines within Article 28A(11) regarding children and young people within the proposed amendment. It appears that for those under 18 at the time of being in receipt of a fine, or any other sentence that would be subject to rehabilitation but for which no rehabilitation period is specified, the period therefore ends at the end of 6 months post-conviction. NICCY queries this and would request further information on the situations that this would apply to children and young people.

Finally, we have previously stated that rehabilitation periods for childhood offending should be shorter than for adult offenders, and Government should reduce further the periods before which childhood convictions become spent. We encourage the Committee to ensure that the periods outlined by the Department in the proposed amendment are balanced and proportionate and reflect the best interests of the child. We query the inclusion of the ‘detention in respect of a conviction in service disciplinary proceedings’ relating to the military and question the application and use of this procedure on children in NI.

We again also recommended that the Department undertake a CRIA in relation to their consultation and proposals and continue to hold this position and would welcome further information as to how the Department have engaged directly with children and young people, and those with lived experience of rehabilitation periods to inform its proposed amendment. We also reiterate a key recommendation made to the Committee on the draft Bill as introduced, relating to the availability of information and guidance to children and young people on what rehabilitation periods are and how they apply, as well as their potential impact.

Through new Clause 28B the amendment provides a power where the Department may make regulations allowing for certain terms of sentences exceeding 10 years to become rehabilitated by an order, and this requires further work and consultation. NICCY would welcome further information on how this would work in the future and the Department’s assessed impacts on children and young people.

### Conclusion

NICCY considers it imperative that the Committee take a child’s rights approach to this Bill, and all others, that they are scrutinising in order to ensure that legislative changes are within their best interests and comply with the UNCRC. We continue to urge the Department to



conduct a CRIA on the Justice Bill and the proposed amendments. We are aware that the Minister intends to bring further amendments to the Justice Bill relating to the creation and circulation of ‘deep fakes’ are NICCY are happy to provide a position and assessment to Committee when the text is published.

NICCY looks forward to continuing to engage with the Committee through the scrutiny of the Justice Bill and future legislation and policy for the rest of the mandate.