

FROM THE OFFICE OF THE JUSTICE MINISTER

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Our Ref - JCP\25\217

Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
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30 September 2025

Dear Kathy,

JUSTICE BILL DELEGATED POWERS – CLAUSE 29A: MATTERS TO BE INCLUDED IN CRIMINAL RECORDS CERTIFICATES

Thank you for your letter of 16 September 2025 in which, following the Committee for Justice meeting on 11 September 2024, you have sought further information on Clause 29A of the Justice Bill, specifically regarding the Department's proposal that the List of Non-Filterable Offences at (the new) Schedule 8ZA would be amended via the negative resolution procedure.

The Department notes and can understand the Committee's concern regarding a reduction in parliamentary scrutiny. However, the proposal is broadly in keeping with the findings within the Review of this aspect of the Filtering Scheme and the feedback received from a public consultation in 2023. For clarity, the Department's proposal in this regard seeks a narrow amendment to section 113A of the Police Act 1997 to allow amendments to the long list of offences in the new Schedule 8ZA to be made by way of the negative resolution procedure. The amendment does not extend to other matters within section 113A, including the definitions of 'central records' or 'relevant matter', which will continue to be subject to the affirmative procedure.

You have asked for further information on four specific matters, the responses to which have been set out below:-

1. The detailed rationale for the change in procedure from affirmative to negative resolution;

The 2023 Review of the List of Specified Offences (section 113A(6D) of the Police Act 1997) highlighted, among other things that this particular aspect of the Filtering Scheme was:-

“... difficult to navigate and not user friendly, particularly when the sub-sections within this part of the Act link to other legislative instruments and associated schedules. This gives rise to uncertainty over what offences are included in the List, particularly when new and relevant offences are enacted – this can lead to misunderstandings around what offences cannot be filtered from Standard and Enhanced disclosure certificates.”

The Review sought to both streamline the process of maintaining the List of Non-Filterable Offences and to improve ease of understanding, thereby allowing individuals to more easily discern which offences would not be filtered from disclosures. The Department’s proposal in Clause 29A to create the new detailed list of offences in Schedule 8ZA, to be amended via the negative resolution procedures, seeks to deliver on these outcomes from the Review.

Alongside this, the Review noted that updates to the offences listed on the face of s113A(6D) of the Police Act 1997 currently require amendment via the affirmative resolution. However, it was also noted during the Review that offences could be regarded as non-filterable by virtue of their inclusion in Schedules to other legislative instruments via a negative resolution procedure, for example:-

- Sub-paragraph (jj) - offences specified in the Schedule to the Disqualification for Caring for Children Regulations (Northern Ireland) 1996; or
- Sub paragraph (ccc) - offences under Schedule 1 or Schedule 2 of the Criminal Justice (Northern Ireland) Order 2008

The Department considers that adopting a single means of amendment via the negative resolution procedure would ensure an appropriate level of legislative consistency with regards to future amendments to this aspect of the Filtering Scheme.

The Review also found that the List comprised only serious, violent and /or sexual offences and queried whether it was a proportionate use of Assembly and Departmental time to progress a more-lengthy draft affirmative approach for decisions, which for the most part, were largely straight-forward in nature. Indeed, it could be argued that this finding is all the more relevant given that the new Non-Filterable List Committee (comprising the Independent Reviewer of Criminal Records Certificates and representatives from PSNI Protective Disclosure Unit, DoH Child Protection Unit and AccessNI) will be scrutinising offences and applying public protection / safeguarding principles and perspectives in making any future recommendations for additions to or amendment of the content on the List.

Finally in this respect, the Department would contend that Committee Members' concerns regarding a reduction in parliamentary scrutiny would be mitigated to some extent as the negative resolution procedure, incorporating the SL1 process, provides for Committee for Justice scrutiny / approval of draft Statutory Rules. The Department considers that this could be regarded as proportionate in the circumstances.

2. Why negative resolution wasn't previously considered adequate and what has since changed that position;

With the passage of time, it has unfortunately proved difficult to get a definitive position on the policy intent here. As mentioned in the opening paragraph of this letter, the proposals in Clause 29A regarding the move to the negative resolution procedure extend only to amendments to the List of Non-Filterable Offences; amendments to other aspects of section 113A of the Police Act (including the definitions of 'central records' and 'relevant matter') will continue to be progressed via the affirmative resolution procedure.

At the time the Filtering Scheme was introduced in NI in 2014, the legislative provisions in section 113A of the Police Act 1997 were lifted directly from the provisions used by the Home Office to commence the Filtering Scheme in England and Wales a year earlier.

The Department's understanding is that the equivalent provisions in England and Wales were introduced at pace in order to provide for a Filtering Scheme in direct response to:-

- a) Recommendation 5 of the [Review of the Criminal Records Regime in England and Wales](#) (Sunita Mason 2011) which sought the removal of old and minor criminal record information from Standard and Enhanced disclosures; and
- b) Court judgements which sought to ensure a level of proportionality was introduced into the disclosure process, and to remove the blanket approach that was in place at that time.

The Department further understands that it has been the Home Office intention to review this aspect of the Filtering Scheme over the intervening period, although that has not proved possible to date due to other conflicting legislative priorities. The Department of Justice has however been able to undertake a review of this narrow aspect of the Filtering Scheme and brought forward proposals to streamline processes and improve the ease of understanding.

3. Examples of when and how often urgent changes to the Schedule have been required in the past that may have indicated the need for this change;

There has been no single example of an urgent requirement to amend the List of Non-filterable Offences. The only offence that has been added directly to the List at s113A(6D) since the Filtering Scheme was introduced was the addition of the Domestic Abuse offence in 2021 (via the affirmative resolution procedure).

Other recently commenced offences have been noted as non-filterable, although not through direct addition to the List at s113A(6D), but by virtue of their inclusion within Schedules to other legislative instruments referenced in s113A(6D), including the extension of offences in relation to grooming (sexting) and voyeurism (upskirting and downblousing) which have been added by virtue of their inclusion in Schedule 2 of the Criminal Justice (Northern Ireland) Order 2008.

It is of note that Clause 29A seeks to omit section 113A(6D) from the Police Act and to present the content in a more detailed list of offences in Schedule 8ZA. This will mean that all new offences will need to be added to the new Schedule

and their inclusion can no longer be effected by virtue of inclusion in Schedules in another legislative instrument.

The nature of the Filtering Scheme is such that filtering rules do not commence until 11 years have elapsed since the date of conviction - this effectively means that there is a window of at least 11 years for new offences to be added to the List. Whilst this helps mitigate any urgency for updates, the Department considers it good administrative practice to deal with such matters as soon as possible.

4. What circumstances the Department foresees that would require changes to the list to be made quickly in the future and how often these circumstances might be expected to arise.

As per point 3 above, and given the period of time before the filtering of new offences would commence, the Department does not envisage an instance that would require changes to the List to be made quickly. The Department's preference however is to progress the inclusion of new offences on the List as soon as they have been created to avoid any risk of being overlooked with the passage of time.

It is of note that the new Non-Filterable List Committee is expected to meet twice per year to not only consider new offences for inclusion on the List, but also to review existing offences for deletion, or to apply conditions against some offences. The Department would expect that the new Committee would seek to bring forward recommendations for a number of changes to the List in its formative period, therefore it is likely that the first few years following Royal Assent of the Bill could see a number of changes coming forward in fairly quick succession. Sitting alongside this is the potential the new Committee to be asked to review the nature of some offences at the request of external stakeholder / interested bodies.

In considering options with a view to easing the potential burden of work referred to the Committee for Justice, it is possible that the Department could 'wrap these changes together' and bring them forward as a single list of amendments, perhaps on an annual basis; although doing so would potentially delay implementation of

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recommended amendments brought forward by the
new Non-Filterable List Committee.

I trust the above information will assist the Committee in their deliberations and scrutiny
of the Bill.



**DAVID GRAHAM
DALO**



**Northern Ireland Assembly
Committee for Justice**

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16 September 2025

Justice Bill Delegated powers - Clause 29A: Matters to be included in criminal record certificates

Dear David

At its meeting on 11 September 2025, the Committee for Justice received a briefing from the Examiner of Statutory Rules on the delegated powers contained within the proposed amendments to the Justice Bill.

When considering the delegated powers in the proposed amendment on matters to be included in criminal records certificates, Members expressed concern about what may be considered to be reduction in parliamentary scrutiny when compared to the existing power under section 113A(7) to amend Schedule 8A to the Police Act 1997, which is subject to the affirmative procedure. While recognising that the proposed amendment includes a consultation element, the Schedule deals with serious offences that cannot be filtered from disclosure certificates by Access NI.

The Department advises that an Order made under the provisions in the proposed amendment will be subject to negative resolution in order to streamline the process and allow the list of non-filterable offences to be more quickly and easily amended than is currently possible.

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The Committee agreed to ask the Department for further information on:

- The detailed rationale for the change in procedure from affirmative to negative resolution;
- Why negative resolution wasn't previously considered adequate and what has since changed that position;
- Examples of when and how often urgent changes to the Schedule have been required in the past that may have indicated the need for this change; and
- What circumstances the Department foresees that would require changes to the list to be made quickly in the future and how often these circumstances might be expected to arise.

I should appreciate a response by 30 September 2025.

Yours sincerely

Kathy O'Hanlon

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Clerk to the Committee for Justice