

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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Kathy O'Hanlon  
Clerk to the Committee for Justice  
Room 242  
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19 November 2025

Dear Kathy,

### **DELEGATED POWERS WITHIN THE JUSTICE BILL AND AMENDMENTS**

Thank you for your letter dated 12 November 2025 in which you asked for further information in relation to discrete aspects of the delegated powers provisions contained in the Justice Bill and the Department's planned amendments.

I am happy to provide the information requested under the separate headings below.

#### **Biometrics Clause 1(1) – new Article 63G persons arrested for or charged with a qualifying offence.**

*The Committee sought clarification of the type of circumstances it is envisaged may be prescribed under 63G(4)(b) for an application for the retention of biometric material when a person is arrested for a qualifying offence other than an excepted offence but not charged with that offence.*



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Policy development work on the arrangements for prescribed circumstances is being progressed<sup>1</sup>. The broad principle regarding the arrangements is that the retention of DNA and profiles will only be permissible for individuals arrested but not charged in cases where a serious offence is involved (a qualifying offence), where prescribed circumstances apply, and where approval has been granted by the Northern Ireland Biometrics Commissioner, which will ensure independent oversight in the use of this power.

The purpose of new Article 63G(4) is to protect some of the most vulnerable members of society in Northern Ireland. The arrangements are designed to assist the PSNI with the prompt investigation of an individual (arrested but not charged of a qualifying offence) who goes on to commit subsequent offences, particularly when that individual and/or victim has come to the attention of police on more than one occasion.

This is especially relevant in cases where charges cannot be brought, such as those involving sexual offences or domestic abuse, often due to evidential challenges or victims feeling unable to proceed because of stigma, vulnerability, or intimidation.

As part of the policy development process, officials will be engaging with the PSNI, the NI Human Rights Commission (NIHRC), and the NI Commissioner for Children and Young People (NICCY) on the proposed circumstances to be covered by the provisions in Article 63G, before policy decisions are taken by the Minister.

This is policy development work in progress, and is therefore subject to change in light of stakeholder engagement and the views of the Minister. However, to help inform the work of the Committee at this stage, the Department can advise that (taking cognisance of both the purpose of the prescribed circumstances provisions and the arrangements in England and Wales) the prescribed circumstances provisions may include situations such as:

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<sup>1</sup> Prescribed circumstances will be set out in regulations and will be the subject of a public consultation. The approval of the Northern Ireland Assembly will also be required under the affirmative resolution procedure.



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- Where the alleged victim is under 18 years of age,
- Where the victim is a vulnerable adult, or
- Where the victim is associated with the person to whom the material relates (defined by Article 3 of the Family Homes and Domestic Violence (NI) Order 1998), or
- If the material is not related to the above, but the retention of the material is in the interests of public protection.

The Department will provide the Committee with the full detail of the policy proposals, and the feedback provided by the NIHRC and NICCY, once they are finalised.

### **Biometrics Clause 1(1) – new Article 63R(4) Persons subject to notification requirements.**

*The Committee asked why the Department considers that the delegation of this power is to be preferred rather than adding to the list by way of primary legislation; and whether this rule-making power will only be used to add new requirements or can also be used to add extant notification requirements which have not yet been included.*

The Department provided the Office of the Legislative Counsel with the most comprehensive list of notification requirements available during the drafting process and therefore the rule-making power will only be used to add new requirements.

However, the Department anticipates that if notification requirements are created by future primary legislation, that legislation would include an amendment provision to update the list contained in new Article 63R.

However, it was considered prudent to include a regulation making power in new Article 63R(4) as a safeguard against any potential future omissions. Furthermore, secondary legislation provides more flexibility, when compared to the lengthy primary legislation process, should an urgent amendment to new Article 63(4) be required in the interests of public protection.



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It is important to note that any future regulations to amend Article 63R will require the approval of the Northern Ireland Assembly under the affirmative resolution procedure.

### **Additional use of Live Links in courts and tribunals amendment**

*The Committee asked for clarification under new **Clause 21E – Live Links: Giving a direction under this chapter** – on the type of matters it is envisaged may be set out for this purpose in the regulations at 21E (4)(b).*

It isn't possible to provide an example of the type of matter that may be set out for this purpose under new clause 21E(4)(b) at this time. This provision is a precautionary measure that would only be required should the provisions as drafted not operate as anticipated or hoped for by including the obligation to have regard to guidance as well as give reasons for a refusal.

### **AccessNI Filtering Scheme amendment**

*Following previous correspondence exchanges and discussion with officials, the Committee asked the Department to consider amending the procedure used in new **Clause 29A - Matters to be included in criminal record certificates** from the negative procedure to the draft affirmative procedure.*

The Minister has noted the Committee's formal request in this regard and is content for Departmental officials to coordinate with the Office of Legislative Counsel to make the necessary changes to the final draft of the amendment prior to tabling for Consideration Stage.

Yours sincerely,

**DAVID GRAHAM  
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## Northern Ireland Assembly Committee for Justice

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12 November 2025

### **Delegated Powers within the Justice Bill and amendments**

Dear David

At its meeting on 6 November 2025, the Committee for Justice received an overview of the delegated powers contained within the Justice Bill and the proposed amendments.

The Committee noted that the Department agreed to change the procedure in relation to Clause 1(1) – New article 63E(11) to the draft affirmative procedure by way of an amendment, and that the Department will make remedial provision to correct a small drafting error in relation to Clause 3(10) to include the assembly procedures in relation to the powers in that clause.

The Committee had previously received advice from the Examiner of Statutory Rules in relation to Access NI - Clause 29A, Matters to be included in criminal record certificates and had written to the Department on 16 September 2025 for further information regarding the proposed use of the negative resolution procedure. The Committee received a response from the Department on 30 September 2025 and took oral evidence from Access NI regarding the amendment on 2 October 2025. In response to Members' questions on the rationale for the use of the negative procedure to amend the list of non-filterable offences, officials stated that they would

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not be resistant to changing the procedure to draft affirmative if this was what the Committee wanted.

The Committee therefore agreed on 6 November to ask the Department to consider amending the procedure used in **Clause 29A, Matters to be included in criminal record certificates** from the negative procedure to the draft affirmative procedure.

The Committee also agreed to ask for the following:

- In **Biometrics Clause 1(1) – new Article 63G persons arrested for or charged with a qualifying offence** - clarification of the type of circumstances it is envisaged may be prescribed under 63G(4)(b) for an application for the retention of biometric material when a person is arrested for a qualifying offence other than an excepted offence but not charged with that offence;
- In **Biometrics Clause 1(1) – new Article 63R(4) Persons subject to notification requirements** – why the Department considers that the delegation of this power is to be preferred rather than adding to the list by way of primary legislation; and whether this rule-making power will only be used to add new requirements or can also be used to add extant notification requirements which have not yet been included.
- In **Live Links Clause 21E – Giving a direction under this chapter** – clarification on the type of matters it is envisaged may be set out for this purpose in the regulations at 21E (4)(b).

I should appreciate a response by 26 November 2025.

Yours sincerely

*Kathy O'Hanlon*

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**Clerk to the Committee for Justice**