

Briefing Paper for Committee of Justice – Justice Bill

20 March 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 written evidence to the Committee of Justice (the Committee) on the Justice Bill. Please note that this submission is not intended to be comprehensive but instead addresses the key aspects of the Bill which most directly engage children and young people's rights and best interests. A summary of recommendations is also provided, alongside one appendix, both in this document. Should the Committee require any further information on any of the matters raised in this submission, NICCY is more than happy to facilitate this in writing.

Children's Rights

The UNCRC sets out minimum standards for children's rights across all areas of their lives such as, civil and personal protection, health, education, welfare. The four guiding principles which flow through the Convention are:

- The right to non-discrimination;
- The right to survival and development to the highest level;
- To their best interests being a primary consideration; and
- To their voice being heard in all matters affecting them.

The UNCRC also highlights that as rights-holders, children have special rights to protection from all forms of harm, violence and abuse and to be supported in their recovery from abuse. The State party has an obligation to ensure that appropriate measures and procedures, including investigatory, court and judicial processes, are in place to realise these rights. The rights of the UNCRC are interdependent and indivisible – like children's lives they cannot be compartmentalised.

In 2023, following examination of the UK and devolved governments, the UN Committee on the Rights of the Child urged the State party to bring its child justice system fully into line

with the UNCRC and other relevant standards. Some of the 'Concluding Observations' relevant to this Bill are as follows:

- '(a) To raise the minimum age of criminal responsibility to at least 14 years of age;*
- (b) To take legislative and other measures to ensure that:*
 - (i) children are not prosecuted as adult offenders, without exception;*
 - (ii) the child justice system is applied to all children who were below the age of 18 years when the offence was committed;*
 - (iii) rehabilitation periods are determined on the basis of the date the offence was committed, not the date of conviction;*
 - (iv) detention is used as a measure of last resort and for the shortest possible period of time and is reviewed on a regular basis with a view to its withdrawal; and*
 - (v) life imprisonment is abolished for children and young people who committed offences when they were below the age of 18 years;*
- (c) To develop early intervention for children and actively promote non-judicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial measures for children, such as probation or community service;*
- (d) To ensure the provision, at an early stage of the procedure and throughout the legal proceedings, of qualified and independent legal aid to children alleged to have or accused of or recognized as having infringed criminal law;*
- (e) To repeal the practice of remanding children into police custody, ensure that no child is held in police custody overnight and avoid the use and reduce the maximum duration of pretrial detention;*
- (f) To continue, for the few situations in which deprivation of liberty is used as a measure of last resort, to strive for full compliance with the international requirement to detain children separately from adults and ensure that detention conditions are compliant with international standards, including with regard to access to education and health-care services, including mental health services;*
- (g) To address the overrepresentation of children belonging to minority groups in detention and develop measures, in consultation with affected children and their families, to prevent racial profiling by law enforcement authorities;*
- (h) To ensure capacity-building for judges, prosecutors, police officers and other professionals, including in the overseas territories, on child-friendly justice procedures, children's rights and the Convention;*
- (i) To promptly investigate, applying a child-friendly and multisectoral approach, all allegations of cases of violence, including sexual abuse, against children in detention, prosecute and duly sanction perpetrators and provide reparations to victims, as appropriate; and*

(j) To end the use of solitary confinement and ensure that any separation of the child from others is for the shortest possible time and is used only as a measure of last resort for the protection of the child or others and in the presence of or under the close supervision of a suitably trained staff member.’¹

General Comment 27

The UN Committee are also undertaking the development of a new General Comment, number 27 relating to children’s access to justice. Access to justice has an important role to play in combating inequalities, challenging discriminatory practices and restoring entitlements that have been denied. It also advances accountability of State and private actors in the fulfilment of their obligations.

The General Comment will clarify concepts and terminology in relation to children’s right to effective remedy and children’s access to justice. It will build on the recent emphasis that the Committee has been placing on access to justice in all its mandated activities, as well as on the existing international standards and national, regional and international jurisprudence. It aims to provide guidance, on ensuring the empowerment of all children as rights-holders, including child human rights defenders, as well as to those children who are involved in justice processes (such as accused, victim, including victim of sexual violence, witnesses, those in need of care and protection, claimants and respondents). The overall objective of the General Comment is to provide authoritative guidance to States Parties to undertake all appropriate legislative, administrative and other actions to ensure children’s right to access justice and effective remedies for the full realisation of all their rights. NICCY is engaged in the development of the General Comment process, and provided an initial response to the concept note in August 2024.²

NICCY encourages the Committee for Justice to engage with the development of the new General Comment on children’s access to justice during the process which is underway, and my Office can assist with sharing appropriate information with the Committee. We also encourage the Committee to consider this Bill, and any subsequent within this mandate, in the context of children’s rights and access to justice.

Part 1 – Biometrics

NICCY wishes to acknowledge the effectiveness of DNA and fingerprint evidence in the detection and prosecution of crime. NICCY also recognizes that it will be necessary to collect and retain DNA profiles and fingerprints for the purposes of criminal investigations and that in some cases, this may include retaining data relating to young people. NICCY is most concerned however, that human rights principles of proportionality, necessity and presumption of innocence, alongside the child’s ‘best interests’ principle’ should strongly underpin the legislative provisions and therefore impose strict limits on data retention. At this

¹ United Nations Committee on the Rights of the Child, ‘Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child’ (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) ;, accessed on 10/1/25), pp.20-21

² NICCY, ‘Call for Submissions on draft General Comment No. 27 on Children’s Rights to Access to Justice and Effective Remedies’ (Available at: [Call for Submissions on draft General Comment No. 27 on Children’s Rights to Access to Justice and Effective Remedies - Niccy](#), accessed on 19/3/25)

stage, we are unclear as to why the '75/50/25' model has been chosen for NI and for the timeframes proposed under the Bill regarding children and young people.

Whilst recognizing the value of biometric data and DNA profiles as intelligence and evidence tools, this should be balanced against the extremely personal nature of the information retained. Consideration must be given to the potentially negative implications of retention, particularly where it impacts on a child or young person's privacy and safety or when it results in them coming into contact with the criminal justice system.

It is NICCY's understanding that in further amendments, the Department intends to add custody images into this Part to ensure that they are covered by the new regime. NICCY welcomes this clarification, as the absence of custody images would have led to a potential mismatch between the systems used across the UK and Ireland on custody photographs, since the Home Office's Custody Image Review in 2019, and the introduction of guidance and the new Law Enforcement Data Service system. NICCY encourages the Committee to ensure that the retention periods of photographs are proportional, in line with the Data Protection Act 2018 and a person's rights and best interests.

NICCY has concerns about the future use of technologies, particularly with the use of Artificial Intelligence (AI) and Facial Recognition Technology for example. It is our understanding that the PSNI do not currently use live facial recognition technology but can utilise the Police National Database (PND) for the purposes of retrospective facial recognition and they are currently developing Guidance on Usage of Retrospective PND Facial Searching.³ It is also unclear how these new provisions will operate against an increasing diverse landscape of technology and the use of AI.

The PSNI employ some tools that make use of AI, according to the NI Policing Board such as a software tool used for online research purposes. However, PSNI has stated that AI technology would not be involved in decision making and that these technological advances are challenges that all law enforcement agencies are grappling with.⁴ Biometrics held by PSNI include not just fingerprints and DNA, but isometric technology also makes a person's face machine-readable. Facial recognition technology, powered by AI has the potential to be discriminatory, as the image databanks that the technology is trained on often contains more white faces but so far PSNI has held off using this.⁵ NICCY encourages the Committee to consider the NI Policing Board's 'Five Year Human Rights Review' and 'Human Rights Review of Privacy and Policing' in their deliberations over this Part of the Bill specifically.

NICCY has long expressed concern about DNA retention and particularly the indefinite retention of DNA samples. NICCY has previously advised Government to ensure that the retention regime was compliant with Article 40 of the UNCRC, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules') and the European Convention on Human Rights (ECHR) by establishing clearer differentiation and stronger

³ RAISE, 'Justice Bill – 2024' (Available at: [Assembly Research and Information Service Briefing Paper - Justice Bill](#), accessed on 22/10/24), p.38

⁴ NI Policing Board, 'Human Rights: 5 Year Review' (2024) (Available at: [Human Rights 5 Year Review - Final.pdf](#), accessed on 26/11/24), p.214

⁵ Ibid., p.215

support for the desirability of reintegration.⁶ If the special status of children is genuinely taken into account and their protection identified as a priority, then a more differentiated approach to the retention of their DNA and fingerprints should be considered. NICCY therefore welcome that the Department has considered children and young people differently in the proposed retention regime, however, does question certain aspects of the timeframes proposed.

Specifically, NICCY has initial concerns over some cases of proportionality, the review and appeal process, the role of the Biometrics Commissioner, access to information and guidance for children and young people, potential issues with Access NI and criminal record checks and the balance of rights in retention periods proposed for children and young people.

Proportionality

NICCY welcomes that the Justice Bill proposes to change the current 'indefinite' retention regime of biometric data, which has been found to be in violation of Article 8 rights of the ECHR. We also agree that biometric data is 'special category data' and collected only when strictly necessary provided for by law, or to 'protect the vital interests of the data subject or of another natural person' therefore, there must be proportionality within any system.

Within the Bill, there are differences in the treatment of children's data and that which is taken from adults for different offences. NICCY does welcome these as important safeguards, that should be ensuring their rights and best interests. However, there are some areas which NICCY would like to draw the Committee's attention to and would welcome further information and clarification on.

Firstly, under 63L, if a child is convicted for a recordable offence (other than a qualifying offence) and was under 18 at the time of the offence, and this was their first minor offence – an exception can be applied, under 63M. NICCY welcomes the inclusion of this Clause. Where this does not apply is where a child, convicted of a recordable offence who receives a sentence of five years or less, proposed Article 63L applies fully – in that their data can be held for 25 years. We note that this is half the time proposed for adult offenders (50 years). However, it is proposed that data will be held for 50 years for both adults and children who receive a custodial sentence of five years and above for a qualifying offence.

It is NICCY's understanding that a qualifying offence is an offence, or ancillary offence, specified under Article 53A of the Police and Criminal Evidence (NI) Order 1989 (PACE (NI) 1989). The current list of qualifying offences in NI contains offences such as murder, rape, grievous bodily harm, assault occasioning actual bodily harm, robbery and burglary, and numerous sexual, indecency and firearms offences including public order and intimidation.

Secondly, NICCY also understands that the Bill, under Article 63P and 63E proposes that biometrics of a child are retained for five years after the completion of a court ordered diversionary youth conference or Community Restorative Justice Scheme, but that this does

⁶ For example, Committee for Justice, 'Official Report: Criminal Justice Bill: DNA/Fingerprint Retention Clauses-NICCY Briefing' (2012) (Available at: [Criminal Justice Bill: DNA/Fingerprint Retention Clauses-NICCY Briefing](#), accessed on 1/12/24). For the 'Beijing Rules', please see: United Nations, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules')' (1985) (Available at: [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\) | OHCHR](#))

not appear to apply to those which are not court-ordered. It is unclear if the two currently accredited Restorative Justice Schemes have been involved with this or what the current arrangements for data retention are when a child enters a scheme under current processes outside that which are court ordered and would welcome further information on this.

NICCY encourages the Committee to consider what the current system of biometric data of children involved in these orders and schemes are, what the changes propose, and if the provisions in the Bill may lead to a difference in retention regimes. Furthermore, we question the necessity of retention of biometric data of children who have received a diversionary youth conference, or Community Restorative Justice Scheme given they are to be diversionary, are non-custodial, and have not been issued through a trial, but because there is an admission of guilt and a reasonable chance at conviction.

The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) have previously found that there was significant confusion about the impact of accepting and receiving a diversionary disposal, particularly around criminal records.⁷ Many young people and their parents were under the illusion a record of such disposal will be erased when the young person turns 18 - with many reporting that they have been given this advice by the police officer or solicitor with whom they have engaged.

NICCY encourages the Committee to seek additional information from the Department on the inclusion of cautions and diversionary disposals here, given their inherent nature of being *diversionary*. We would also welcome clarification if the proposed biometric regime applies to informed warnings for minor offences, as well as any difference the proposed legislation would have on the retention regimes between orders and notices issued by different parts of the justice system (for example, PPS and Youth Justice Agency, and the PSNI).

Thirdly, NICCY also encourages the Committee to consider the impact of any future legislative change that may be proposed, particularly on different types of notices/orders that may impact on children and young people, and by virtue of this Bill, the retention of their biometric data. Should the application of penalty notices be extended to those under 18, there are potential unintended consequences and NICCY would not consider those to be in the child's best interests or in line with their UNCRC rights, specifically as follows:

The UNCRC states, in Article 40, that:

*'States Parties recognised the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth...which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'*⁸

Children's right to privacy, as outlined in Article 16, is crucial to balancing Part 1:

'No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour'

⁷ NIACRO, 'NIACRO response to PSS Prosecution Quality Standards' (2015) (Available at: [NIACRO response to PSS Prosecution Quality Standards](#), accessed on 6/1/25)

⁸ United Nations Committee on the Rights of the Child, 'Convention on the Rights of the Child' (1989) (Available at: [Convention on the Rights of the Child | OHCHR](#), accessed on 1/12/24)

*and reputation. The child has the right to the protection of the law against such interference or attacks.*⁹

On diversion, General Comment 24 holds that:

*'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 administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records.'*¹⁰

NICCY appeals to the Committee to ensure that it is satisfied that the retention periods proposed, of children's biometric material, is clearly in their best interests, that they are not stigmatised because of the retention periods imposed, and that the principles and recommendations as outlined in the UNCRC, including Article 16, and General Comment 24 are upheld.

Finally, Article 63G proposes the retention period of three years from a person arrested but not charged with a qualifying offence, dependent on certain circumstances. These, according to the Department will be prescribed in future regulations/amendments. NICCY is unclear why these are not on the 'face of the Bill' for adequate scrutiny, given that this Article seems to apply to both children and adults, therefore, no difference in the regime seems to exist. NICCY questions the proposed period of retention of DNA for a child arrested and not convicted and would welcome further information on the Department's rationale. As highlighted by the NI Human Rights Commission, in the case of *S and Marper v UK*, the European Court of Human Rights specifically mentioned the risk of stigmatisation for people whose biometrics were retained who were not convicted of any offence and are entitled to the presumption of innocence. The Court considered that the retention of the unconvicted persons' data especially harmful in the case of minors.¹¹

The proposal to grant an extension to the retention period for DNA and fingerprints will require very careful monitoring and regulation. If a court grants an extension for the retention of the DNA of a child or young person who has been charged but not convicted, this creates the impression that doubt and suspicion remain regarding their innocence, further stigmatising them. It also contravenes Article 40 of the UNCRC. NICCY recommends that the Committee satisfy itself that the powers to extend under Clause 63H are in line with the child's best interests, proportionate and their Article 40 rights specifically. We further recommend that information is collected and issued to the person if an extension has been granted.

Biometrics Commissioner

NICCY supports the establishment of a Biometrics Commissioner as part of the Bill, under Article 63Z(1). We further support the role of the Commissioner and their office, to keep under review the use of biometric technologies, both current and new. As previously mentioned, NICCY is concerned that this Bill does not seem to be 'future-proofed' which

⁹ Ibid.

¹⁰ United Nations Committee on the Rights of the Child, 'General comment No. 24 (2019) on children's rights in the child justice system' (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.6

¹¹ *S and Marper v UK* (2008) ECHR 880, paras 122, 124 (Available at: [S. AND MARPER v. THE UNITED KINGDOM](#), accessed on 6/1/25)

opens the potential for use of technology in the near future against children and young people unless appropriate safeguards are in place.

NICCY notes that what is proposed in Part 1 (and in the associated Schedule) appears to be in line with the Scottish model in that their Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention and use of biometric data, as well as the power to issue guidance about the acquisition of biometric material and the handling, retention and destruction of it. As stated, the Chief Constable must have regard to any guidance issued by the Commissioner, and the Commissioner also has functions under the review mechanism where material is held long term (Article 63U), alongside the requirement of publishing an annual report.

It is unclear whether the Commissioner would have a role in reviewing material held 'short' or 'medium' term. Whilst this may follow in regulations, or in further amendment, NICCY encourages the Committee confer powers to the Commissioner to consider individual applications for review of retention of their biometric material for children and young people. Furthermore, the Commissioner could oversee any extension applications made about children and young people, to ensure oversight and monitoring of such. NICCY would also welcome further information on the duties and powers of the Commissioner's office, particularly on the oversight of the new biometrics' regime and any such monitoring of it which would be an important safeguard.

There are other notable differences between the Scottish model (under the Scottish Biometrics Commissioner Act 2020) and what is proposed within Part 1 of the Justice Bill which NICCY encourages the Committee to consider.

A complaints procedure exists under Section 15, in that an individual, or someone acting on an individual's behalf, may make a complaint to the Commissioner that a person who is required by Section 9(1) to comply with the Code of Practice has not done or is not doing so in relation to the individual's biometric data. Section 23(1) of the Act provides that where the Commissioner considers that Police Scotland, the Scottish Police Authority or the Police Investigations and Review Commissioner has not complied or is not complying with the Code of Practice then the Commissioner may issue a compliance notice. A compliance notice is a notice requiring the person to whom it is issued to take the steps set out in the notice to address the person's failure to comply with the Code of Practice. Section 27 of the Scottish Biometrics Commissioner Act 2020 provides that where a person to whom a compliance notice has been issued refuses or fails, without reasonable excuse, to comply with the notice, the Commissioner may report the matter to the Court of Session.¹² It is unclear whether similar provisions or powers exist, or are intended to exist, for NI.

NICCY also supports the position of the NI Human Rights Commission's recommendation that the Article 63Z should refer to the Commissioner performing a role in considering individual applications. NICCY also encourages the Committee to consider the merits of a review/appeals process as part of the Bill, particularly for children and young people to access. NICCY considers there to be a role for the Biometrics Commissioner's office, in conjunction with the PSNI as the data holders, in an appeals/review mechanism.

¹² See: 'Scottish Biometrics Commissioner Act 2020' (Available at: [Scottish Biometrics Commissioner Act 2020](#), accessed on 7/1/25)

In 2023, the Scottish Commissioner published two Joint Assurance Reviews of the police's approach to the acquisition of biometric data from children arrested in Scotland, and from vulnerable persons in police custody, making a series of recommendations.¹³ NICCY encourages the Committee to consider the Commissioner's role in ensuring the rights of specific vulnerable groups such as children and young people should the new retention regime become law.

Access to information and guidance

In the 2023 Scottish Joint Assurance Review on biometric data from children arrested, the human rights of children and whether it was lawful, proportionate and necessary to obtain children's biometric data and record it on policing databases. As previously highlighted, the Review made a series of recommendations, however, NICCY wishes to draw the Committee's attention to the provision of and access to information and guidance for those subject to having their information collected and retained. The 2023 Joint Assurance Review found that 'more should be done to ensure that everyone who has their biometric data captured as a result of being arrested in Scotland, including these protected groups, is better informed about the purposes for which their data will be used'.¹⁴ Under the UNCRC Article 17, children and young people have the right to access information and Articles 37 and 40 explicitly outline their rights in the justice system. Children involved in the criminal justice system are particularly vulnerable, and adequate processes and systems must be in place to ensure that they fully understand and are informed of proceedings. As is the case when charges are brought, authorities should ensure that the child understands the charges, options and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons.¹⁵

NICCY encourages the Committee to ensure that specific guidance will be produced on the new retention periods for biometrics, DNA and photographs to the public, and specifically, to children and young people. This would include producing children and young people's versions of any guidance and having easily accessible information available and could form part of the Biometrics Commissioner's powers and duties under Article 63Z(5). The Committee should also ensure that all children, subject to having their biometric and DNA data taken and retained, consent to doing so.

We further advise that the Department and PSNI ensure that community and voluntary sector organisations working with children and young people in and with youth justice have the adequate information and resources. The Committee should also seek to ensure that

¹³ Both Joint Assurance Reviews are available at the Scottish Biometrics Commissioner's website. (Available at: [Operations | Scottish Biometrics Commissioner](#), accessed on 7/1/25)

¹⁴ Scottish Biometrics Commissioner & Scottish Police Authority, 'Joint Assurance Review of the acquisition of biometric data from children arrested in Scotland' (2023) (Available at: [Biometric data acquisition from children and vulnerable people reviewed | Scottish Biometrics Commissioner](#), accessed on 1/12/24)

¹⁵ United Nations Committee on the Rights of the Child, 'General comment No. 24 (2019) on children's rights in the child justice system' (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.9

professionals working with children and young people in the criminal justice system have continuous and systematic training in their rights.

NICCY notes that the Department has provided the Committee with information on how the Bill engages with the European Convention on Human Rights. We would welcome a further assessment to be undertaken by the Department, through conducting a Child's Rights Impact Assessment (CRIA) for all of the relevant articles of the Justice Bill, including Part 1, that relate to children and young people, including the planned amendments for Consideration Stage.

NICCY encourages the Committee to ensure that the provisions contained within Part 1, particularly where it involves children and young people are legally sound, and do not create conflict with the child's best interest's principle, but indeed, promote it. The Committee should consider any unintended consequences of biometric and DNA retention through informed warnings, cautions and diversionary disposals, the potential to have different retention regimes in place for the same disposal (court ordered or PSNI referral) and to fully and properly consider how children and young people are made aware of their data being retained, for how long and the impact that this could and will have.

NICCY has previously suggested that consideration should be given to reviewing the retention of young people's DNA data and fingerprints once they reach 18, including an application process, so that they might be given an opportunity to enter adulthood with a clean slate. This decision would, of course, be dependent on the seriousness of the crimes committed and the number of offences for which they have been convicted, with appropriate safeguards. However, NICCY recommends that particular consideration be given to this proposal where children or young people have been arrested for or charged with minor offences or have been convicted for the first, minor offence.

Part 2 – Children

It is NICCY's long held position that children and young people should only be subjected to bail conditions where absolutely necessary and disproportionate, onerous conditions should be avoided as far as possible. Further, any bail decision should be subject to an appeal/review. There should be a strong statutory right to bail for children and young people, subject to the power of police and court to refuse it in limited circumstances. This will ensure compliance with international human rights instruments including the UNCRC and associated General Comments. NICCY welcomes the introduction of the provisions outlined in Part 2 of the Justice Bill on strengthening the bail and remand of children in NI, many changes have been long-awaited. NICCY will outline key matters relating to children's rights as they engage with the provisions in Part 2, and address some of the key clauses, drawing the Committee's attention to some areas for further consideration.

The youth justice system

Within NICCY's recently published Statements on Children's Rights in NI (2020 and 2023) the Commissioner called for an increased impetus to ensure that the youth justice system is child rights compliant.¹⁶ Likewise the Youth Justice System must address the substantial

¹⁶ For further information, please see: NICCY, 'Statement on Children's Rights in NI 2' (2020) and 'Statement on Children's Rights in NI 3' (2022) (Available at: <https://www.niccy.org/about-us/our->

outstanding issues concerning the implementation of the best interest's principle. This must include:

- Custody as a last resort and for the least possible time;
- Diversion from the formal system;
- Statutory time limits for the processing of youth court cases of 120 days;
- The Department of Justice and the Youth Justice Agency must create a holistic approach to measuring, reporting and analysing progress in the outcomes for young people; and
- Participation of children and young people in design and delivery of services.

A child rights approach requires the State to see the whole child, taking a tailored approach to children and young people in a manner that protects their dignity and best interests. The work undertaken across many agencies in NI raise awareness of the impact of childhood trauma should influence how the rights of children involved in offending are protected. The impact of Adverse Childhood Experiences (ACEs) should inform how strategic decisions are made with regards to all children and young people in the justice system which has to date viewed them through the prism of victim and offender. Such an approach is more likely to reduce offending and re-offending by children.¹⁷ It is important that the Committee consider the best interest's principle for children in the development of this Bill. NICCY also acknowledges the ongoing work of the Youth Justice Agency and Youth Justice Services.

Bail, remand and custody of children

NICCY strongly believes that the custody of any child or young person should be a measure of absolute last resort and instead, that alternative responses should be made and greater resources directed towards early intervention and diversionary measures. The Commissioner has consistently stated this opinion in advice to government on youth justice matters. Where a decision is made to detain a young person, this should be only be made when it is regarded as the only remaining option and should be for the shortest period possible, as obligated by the UNCRC (Article 37(b)), and other international treaties, including the 'Beijing Rules' which state that 'the institutionalisation of juveniles should only be resorted to after consideration of alternative disposition measures'.¹⁸

The European Network of Ombudspersons for Children (ENOC) has also stated that 'the only legitimate reason for detaining children, before or after trial, must be that they pose a serious and immediate risk to others'.¹⁹ Even in such cases, it is recommended that use of custody should be constantly reviewed and alternatives considered.

[current-work/statement-on-childrens-rights-in-ni-2/](#) and [NICCY-SOCRNI-3-Main-Report-2022-final-web.pdf](#))

¹⁷ CYCJ, 'Key Messages from the Centre for Youth and Criminal Justice' (2019) (Available at: [Key-messages-2019-1.pdf](#), accessed on 20/12/24)

¹⁸ United Nations, 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('Beijing Rules')' (1985) (Available at: [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\) | OHCHR](#))

¹⁹ European Network of Ombudspersons for Children, 'European Network of Ombudspersons for Children (ENOC) Statement on Juvenile Justice: Europe's children's champions challenge governments to respect young offenders' rights' (2003) (Available at: [Microsoft Word - ENOC 2003 Statement on Juvenile Justice .doc](#), accessed on 10/1/25), p.3

Research has shown the detrimental effect custodial detention can have on a young person, therefore all steps which can be taken, should be taken, to avoid such detention.

International human rights standards consistently emphasise that the custodial detention of children and young people should be a measure of last resort and for the shortest time possible. The UNCRC, through Articles 37 and 40 and associated Concluding Observations also raise diversion as a crucial aspect when dealing with youth justice, recommending that the UK and devolved governments:

‘Develop early intervention for children and actively promote nonjudicial measures, such as diversion, mediation and counselling, for children accused of criminal offences and, wherever possible, the use of non-custodial measures for children, such as probation or community service.’²⁰

Diversion involves the referral of matters away from the formal criminal justice system, usually to programmes or activities. In line with children’s best interests, and their needs, prevention, early intervention and diversion should be the preferred methods of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process, leaving the exact nature of the diversionary system and schemes up to States.²¹

NICCY is wholly supportive of appropriate, well-resourced diversionary measures which successfully re-direct children and young people away from the youth justice system. International human rights conventions and instruments strongly advocate the use of diversion and international research illustrates evidence of improved outcomes for young people who are successfully diverted away from the formal criminal justice system. The ‘Beijing Rules’ state that diversion should be used, and that the ‘practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration (for example the stigma of conviction and sentence)’.²²

NICCY broadly welcomes the provisions as set out in Part 2 of the Bill relating to bail of children and young people (Clauses 4-7) and the separation of children and adults in detention (Clauses 9-11, 13 and 16) however has some concerns on wording that we wish to draw the Committee’s attention to in Clauses 5 and 6. This section will also provide commentary on the separation of children and adults, Youth Custody and Supervision Orders (Clause 12) and the considerations relevant to bail: accommodation (Clause 8), and NICCY’s Formal Investigation. NICCY wishes to draw the Committee’s attention to relating

²⁰ United Nations Committee on the Rights of the Child, ‘Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child’ (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) ;, accessed on 10/1/25), p.21

²¹ United Nations Committee on the Rights of the Child, ‘General comment No. 24 (2019) on children’s rights in the child justice system’ (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.5

²² United Nations, ‘United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘Beijing Rules’)’ (1985) (Available at: [United Nations Standard Minimum Rules for the Administration of Juvenile Justice \(The Beijing Rules\) | OHCHR](#))

to bail and remand which we have raised with Government and Relevant Authorities for some time including the use of the Juvenile Justice Centre (JJC) as a place of safety, the overuse of PACE and the previous work relating to the Regional Care and Justice Campus in the context of this Bill and the Independent Review of Children's Social Care.

Bail and bail conditions (Clauses 5 and 6)

Clauses 5 and 6, according to the EFM, make changes to police and court bail, namely, inserting new clauses into the PACE (NI) Order 1989 and Criminal Justice (Children) (NI) Order 1998, ensuring that police have regard to certain youth-specific considerations when granting bail to or varying the conditions of bail of a person who appears to be under the age of 18. Similarly for the courts, places a duty on courts to release on bail a child to whom this applies to, subject specified exceptions. It is the exceptions that NICCY wishes to draw the Committee's attention to - the circumstances under which a court can refuse to release a child on bail.

Clause 5 is drafted as follows (regarding police bail after arrest):

5.—(1) Article 48 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (bail after arrest) is amended in accordance with subsections (2) to (4).

(2) In paragraph (3D)—

- (a) omit the "and" at the end of sub-paragraph (b), and*
- (b) at the end of sub-paragraph (c) insert "; and*
- (d) he does not cause a serious threat to public order."*

(3) In paragraph (3F)—

- (a) in the words before sub-paragraph (a) omit "preventing that person from",*
- (b) at the start of each of sub-paragraphs (a), (b) and (c) insert "preventing that person from",*
- (c) omit the "or" at the end of sub-paragraph (b), and*
- (d) at the end of sub-paragraph (c) insert "; or*
- (d) preventing that person's release from causing a serious threat to public order."*

The EFM explains that:

Subsections (2) and (3) amend Article 48(3D) and (3F) to insert a fourth ground for attaching conditions to police bail: to prevent a serious threat to public order. Subsection (4) amends that Article to insert a signpost to new Article 48ZA.

Under 10F and 10G, regarding the courts power to refuse, and conditions of bail, the Bill states:

10F.—(1) A court may refuse to release a child on bail under Article 10E if it is satisfied that the following two conditions are met.

(2) The first condition is that if the child is convicted of the offence it is very likely that a custodial sentence will be imposed.

(3) The second condition is that there are substantial grounds for believing that it is necessary to remand the child in custody to prevent—

- (a) the child failing to surrender to custody,*
- (b) the child committing an offence while on bail,*
- (c) the child interfering with witnesses or otherwise obstructing the course of justice, whether in relation to the child or any other person, or*
- (d) the child's release causing a serious threat to public order.*

And:

10G.—(1) This Article applies, subject to paragraph (5), where a court is deciding whether to—

- (a) impose a condition when granting bail, or in respect of bail that has been granted, under Article 10E, or*
- (b) vary or remove a condition in respect of bail that has been granted under Article 10E.*

(2) The court must not impose a condition of bail unless it is satisfied that it is necessary to do so to prevent—

- (a) the child failing to surrender to custody,*
- (b) the child committing an offence while on bail,*
- (c) the child interfering with witnesses or otherwise obstructing the course of justice, whether in relation to the child or any other person, or*
- (d) the child's release causing a serious threat to public order.*

For this section, the EFM explains that:

Paragraph (3) sets out the second condition: there must be substantial grounds for believing that it is necessary to remand the child in custody to prevent: committal of further offences; interfering with witnesses; failure to surrender to custody; or their release would cause a serious threat to public order.

It is our position that the EFM does not give a full or accessible explanation of the policy intent behind these clauses, which could be subject to interpretation. There are a number of different ways in which one can interpret clauses 5 and 6 here. For example, is it the child themselves and their potential conduct that could cause 'serious risk to public order' if released on bail, or is it the potential actions of *others* that would affect the child being released on bail? We encourage committee to investigate further on this and also consider the impacts of child criminal exploitation, and the potential for a child or young person to have been coerced into actions by others, and how this is realised through the system. We encourage the Committee to consider how, at this stage, and at others, coercion and exploitation is recognised, including in any factors relating to bail decisions.

We also query if there was an intentional difference in the drafting in Clause 5 in relating to 5(2)d amending PACE NI and 10E(2d) amending Criminal Justice Children (NI) Order on the serious threats to public order between ‘he does not cause’ and ‘the child’s release causing...’. Children and young people who otherwise would be released on bail, i.e. meeting no other criteria for refusal of bail, should not be denied bail due to the potential actions of other people. We encourage the Committee to seek clarification on the intention of these provisions. Furthermore, if the clauses are to be read that the child could potentially cause serious threat to public order by virtue of their own actions/acts (not the simple act of them being released) this could be covered under ‘b. the child committing an offence while on bail’ already, as outlined in both 10F and 10G. There is potential to see this as a breach of children and young people’s rights under the UNCRC.

NICCY are aware that the Committee have raised questions about these Clauses already and we share the concerns about them. NICCY therefore recommends that the Committee of Justice seek legal advice on Clauses 5 and 6, particularly with regard to the ‘serious threat to public order’ and who is issuing or causing the threat.

Separation of children and adults (Clauses 9-11, 13 & 16)

Clauses 9 to 11, 13 and 16 seek to legislate for the separation of children and adults in custodial settings, on sentencing, remand and detention. The provisions also set out in statute that where a court remands or commits a child to custody, the child must be detained in a child-appropriate location, i.e. a JJC. NICCY welcomes the provisions as set out, in keeping with the UNCRC Rights (Article 37) and recommendations made in recent Concluding Observations made to the UK State Party (2016; 2023). Article 37 states that ‘every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so’. The ‘child’s best interests’ exception is further interpreted narrowly by the Committee, and separate facilities should exist – which in NI, is the JJC as outlined in law and current practice. This should also be a measure of last resort. In General Comment 24, the UN Committee highlighted that:

‘Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison from adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate.’²³

The UN Committee in June 2023, recommended that the UK State Party (including NI):

‘...continue, for the few situations in which deprivation of liberty is used as a measure of last resort, to strive for full compliance with the international requirement to detain children separately from adults and ensure that detention conditions are compliant with international standards, including with regard to access to education and health-care services, including mental health services.’²⁴

²³ United Nations Committee on the Rights of the Child, ‘General comment No. 24 (2019) on children’s rights in the child justice system’ (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.15

²⁴ United Nations Committee on the Rights of the Child, ‘Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child’ (2023) (Available at: [Concluding observations on the combined 6th and 7th](#)

NICCY has previously expressed serious concerns about the detention of children in Hydebank Wood Young Offenders Centre, calling for them to be removed and accommodated in appropriate juvenile provision. A range of inspection, research and review reports and statements from other agencies have also commented that it was not an appropriate environment for young people.²⁵ We therefore welcome the provisions as set out in the Bill to legislate for the current practice of separation of children and adults in NI.

Youth Custody and Supervision Orders (Clause 12)

Clause 12 of the Justice Bill seeks to establish new Youth Custody and Sentencing Orders (YCSOs) inserts new provisions into the Criminal Justice (Children) (NI) Order 1998 and removes the availability of two other existing, orders.

It is our understanding that the new YSCOs will apply when a child is found guilty by or before any court of an offence, it appears to the court that the child was aged 14 or over when the offence was committed and the offence is one which is punishable, in the case of an adult, with imprisonment, and for which the sentence is, in the case of an adult, not fixed by law as imprisonment for life.

A YSCO can be issued to a person over 18, only on the basis that proceedings started when the person was a child – for example, you started the hearings in the Youth Court and aged out. If a YSCO is issued to an adult, the YSCO is served in Hydebank or Ash House, not in the JJC. This is outlined in Clause 38(A)(4) of the Bill and the associated Schedule under the 1998 Order. NICCY welcomes this being set out clearly in the Bill.

A YSCO is a 'split' order – shared between custody and supervision in the community. It cannot apply for less 6 months or for more than two years apart from if the child is above 16 years old, pending certain criteria are met under Article 38B. Article 38D relates to the supervision under a YSCO, which is to be conducted by a 'probation officer', or 'such other person as the Department may designate. Further information on such persons, and probation officers, such as the Youth Justice Agency/Services, or those within the Community and Voluntary setting would be welcome.

In creating new YSCOs, the Bill proposes to remove of two that are currently used by the courts to place children into custody. This involves the replacement of two existing youth-specific custodial orders, which are also location-specific, one of which was not commenced under previous legislation. NICCY encourages the Committee to consider the other existing orders that are at the courts disposal for children to ensure that they are in the child's best interests, and that there is adequate supervision within community settings to support reintegration and diversion from the justice system in the future.

Furthermore, NICCY encourages the Committee to ensure that there are robust monitoring processes in place to ensure that children and young people subject to these new Orders,

periodic reports of the United Kingdom of Great Britain and Northern Ireland :, accessed on 10/1/25), p.21

²⁵ See: Prison Review Team, 'Review of the Northern Ireland Prison Service: Conditions, management and oversight of all Prisons, Interim Report' (2011) (Available at: [Review of the Northern Ireland Prison Service Interim Report | Department of Justice](#)); CJINI 'Youth Diversion – a thematic inspection of youth diversion in the criminal justice system in Northern Ireland' (2011) (Available at: [PBNi Report](#)); CJINI, 'Monitoring of progress on implementation of the Youth Justice Recommendations' (2015) (Available at: [Monitoring of progress on implementation of the Youth Justice Recommendation \(second report\).](#))

are so as a measure of last resort, in line with the Strategic Framework for Youth Justice and the UNCRC. It may be beneficial for this to be made explicit either on the face of the Bill, in the Explanatory and Financial Memorandum (EFM) or within associated guidance that would be required to be produced on the new orders themselves.

Considerations relevant to bail: accommodation (Clause 8)

NICCY do not feel that children and young people should be remanded into custody because of a lack of suitable accommodation and therefore support this prohibition of such in the absence of any other reason and therefore welcomes Clause 8. However, we are aware that the Minister does not intend to commence this Clause should the Bill receive Royal Assent. NICCY does not support this position.

In accordance with Article 12 of The Commissioner for Children and Young People (NI) Order 2003, NICCY received a complaint that a Looked After Child (LAC) – ‘Vicky’ – had been held on remand in the JJC for at least 290 days, alongside a number of other concerns over her health and wellbeing. Due to the significance of these matters the Commissioner decided to use the formal investigation powers of the office to investigate this. The Commissioner worried that the young person’s rights had been adversely impacted by the action and/or inaction of relevant authorities, and that this may have been indicative of systemic failings in relation to care and other services provided to LACs.

Vicky, aged 15 at the time, spent 408 days of a period of 521 days (78.3%) in the JJC, either on PACE or on remand, never as a sentenced offender. During the investigation, there was clear evidence that a Court had directed that the Health and Social Care Trust to find accommodation that was more suitable for Vicky to reduce police involvement and admission to JJC and a community paediatric opinion reported that Vicky was much too vulnerable for the JJC. Despite this, Vicky experienced prolonged stays in the JJC as an alternative plan failed to be identified. Throughout most of her time in the JJC, Vicky had been granted bail but due to a lack of suitable accommodation, it meant that she was unable to perfect it. This raises fundamental questions over deprivation of liberty and access to justice.²⁶

NICCY has previously recommended that the law regarding bail must be revised to remove the JJC as a place of safety (removing lack of accommodation as a reason to remand).

NICCY also supports the provisions that strengthen the presumption of unconditional bail for children and young people. In the formal investigation report referred to above it was reported that the bail conditions issued to 15- and 16-year-old Vicky were onerous and did not consider her cognitive ability and needs. These included conditions such as following house rules in the residential home and included going to bed at a specific time and handing over her phone. Failure to do so was a breach of bail and resulted in reports and arrests. Vicky’s response to such call outs was a red flag response of fight, flight or freeze. Symptoms of Vicky’s needs, because of engagement with the justice system had unintended consequences of exacerbating rather than alleviating their deterioration. This caused the behaviour to exacerbate.

²⁶ NICCY, ‘Looked After? A Formal Investigation into the Life of a Child in the care of the State: Main Report’ (2023) (Available at: [Formal Investigations - Niccy](#), accessed on 27/9/24)

Furthermore, a Corporate Parent must never suggest or agree to bail conditions which are aimed at ‘managing’ a child or compelling their compliance with care home rules.

Regional Care and Justice Campus

A key principle which NICCY believes should inform the development of all transitional arrangements is that each young person’s case be considered individually, in order that their unique circumstances and needs can be evaluated, and ongoing support and services appropriately tailored. Previously, this had been the focus of a ‘Regional Care and Justice Campus’ (RCJC) - joint work progressed by the Department of Justice and the Department of Health to reform facilities for children and young people and the proposal to bring secure care and justice into a shared facility.

In 2021, responding to the public consultation on the shared campus, or RCJC, NICCY outlined our position and recommendations on the proposals based on a child’s rights perspective. This included a small summary on policy recommendations drawing out the need for a joint health and justice campus, a review of the current and proposed admissions into the secure care centre. NICCY also outlined the Commissioner’s recommendation on the campus no longer be used as a designated place of safety.²⁷

NICCY continues to strongly believe in the removal of the regional campus being used as a designated place of safety (and the JJC) and in its place community satellite provision is used as a preferred alternative. Community based provision should also provide a place of safety for children/young people who are seen as not having suitable alternative accommodation rather than an initial night spent in custody as is the current situation. NICCY remains concerned over the lack of suitable accommodation provision in NI and the steps taken to ensure that this is provided for despite the continuous advice provided to government, alongside recommendations.

The RCJC program aimed to implement the 11 recommendations as outlined in the Review Report including the key recommendation of the introduction of a new integrated RCJC for children. A decision was taken by the then Ministers of Health and Justice in 2022 to ‘pause’ the creation of an RCJC, and in March 2024, further to Ministerial decision, the RCJC program workstream was formally closed. It is NICCYs understanding that this marked a new phase in collaborative working between the two Departments to improve the way that vulnerable children and young people who have been, or are at risk of being, placed in a secure facility are cared for.²⁸

In June 2023, the Independent Review of Children’s Social Care Services (Independent Review) report was published outlining 53 recommendations on how children’s social care services in NI should be reshaped. Within the Independent Review, a number of issues with the systematic use of Woodlands JJC was outlined, including an expression of concern that the JJC is being inappropriately used. The relationship between Woodlands JJC and Lakewood Regional Secure Care Centre (Lakewood) was also considered, and agreed with previous reviews of children’s services, that there should be a creation of a RCJC bringing together the services provided at Woodlands JJC and Lakewood. The Independent Review found that the majority of children and young people admitted to Woodlands have been

²⁷ NICCY, ‘Advice paper on the establishment of a Regional Care and Justice Campus’ (2021) (Available at: <https://www.niccy.org/publications/regional-care-and-justice-campus/>, accessed on 3/12/24)

²⁸ From internal correspondence between NICCY and the Departments of Health and Justice.

admitted by police officers using their powers conferred by the PACE (NI) 1989 It also provided an overview of a number of key issues and challenges in doing so, which if overcome, 'would be greatly assisted by having a Children and Families ALB for NI which could both manage the changes and also have the governance and management responsibility for the services in the future rather than this being a responsibility of one HSCT.'²⁹

Final recommendation 40 of the Independent Review stated that within the context of developing a region-wide Children and Families ALB there should be the development of an RCJC within the Woodlands site. It is unclear to NICCY how the NI Executive and the Department of Health intend to move forward with a number of recommendations of the Independent Review, including an ALB, particularly with regard to the future of the JJC and the absence of community accommodation that is required.

It is NICCY's understanding that primary legislative change was required to enable the RCJC Programme as identified by the consultation report and the Departmental response to it. In the Establishment of a Regional Care and Justice Campus Consultation Report, the Departments' stated that:

*'Legislation to establish the Secure Care Centre and other elements of the Campus will be developed in consultation with relevant stakeholders. We are clear that this legislation must support the Centre to fulfil its intended purpose of providing a safe, secure and therapeutic environment focused on achieving stability and preparing for a return to the community in the shortest timeframe possible. We do not consider that classification as a children's home will be appropriate. Rather, we will seek to establish the Secure Care Centre as a new category of establishment, with bespoke standards and legislation developed to reflect its specific functions and underpin the ethos of a relationship-based, trauma-informed, therapeutic care Centre.'*³⁰

It remains unclear whether, given this identification of legislation that would be required, if provisions were drafted and if so, what would they have applied to/amended. We are also unclear if and how the powers under the Children's Services Co-Operation Act (NI) 2015 have been considered or utilised. NICCY would encourage the Committee to explore this with the Department(s) in further detail.

NICCY are aware that a pilot program on bail fostering was launched in the Southern Health and Social Care Trust in 2023. We welcome that the criteria for admission in the pilot will be extended in the near future and would recommend the Committee seek information on the numbers of children and young people who were on remand because of a lack of suitable address, either as Looked After Children, or not. We encourage the Committee to consider how it can further and increase the use of such schemes in the absence of suitable accommodation. Even with Clause 8 enacted, if it remains uncommenced, it is NICCY's understanding that the JJC will remain as a designated 'safe' place for children if all other reasons for granting bail are met. NICCY does not believe that this meets the standards

²⁹ Department of Health, 'Independent Review of Children's Social Care Services' (2022) (Available at: [Report of the Independent Review of Children's Social Care Services in Northern Ireland | CSCS NI Review](#), accessed on 4/12/24), p.247

³⁰ Department of Justice, 'Establishment of a Regional Care and Justice Campus: Consultation Document' (2020) (Available at: [Microsoft Word - Establishment of Regional Care and Justice Campus - consultation - Master copy](#), accessed on 13/1/25), p.4

required under the UNCRC or serve in the best interests of children. Clause 8, if further to Royal Assent, remains uncommenced, should only do so for the shortest possible time. The role of the Committee of Justice, and the Committee of Health, through post-legislative scrutiny, and monitoring of the Bill, will be necessary.

Bail and a place of safety

An inspection of the JJC in 2022 found that it was used too often as a place of safety because there were no available alternatives and children remained in custody because a suitable bail address was not available.³¹ Provisions must be made for alternative accommodation for children to minimise use of the JJC. Despite multiple recommendations made to the Department and successive Ministers by various organisations, this has not been progressed. CJINI assessed progress on the implementation of the Youth Justice Review (YJR) recommendations in 2015 (specifically Recommendations 8, 9, 18 and 19) and found that a recommendation on the 'development of an appropriate range of supported (and if necessary secure) accommodation, accessible at short notice, to reduce to an absolute minimum the use of the JJC as a place of safety under the PACE (NI) 1989 pending a court appearance, had not been achieved, and that there was work required to ensure that 'Looked After Children', or children in care of Social Services should not have higher rates of remand compared to children in the general population'.³²

In 2021, the Tracing the Review Report found that the overuse of remand and the placement of children into custody under PACE (NI) 1989 provisions still remain areas of concern. While the overall numbers of young people in custody have declined, there is continued over-representation of some groups, specifically Looked After Children. The recommendations of the Review concerning the development of alternatives to custodial remand have not been advanced, and such lack of alternatives remain.³³ NICCY recommends that Health and Social Care Trusts should discharge their statutory duty to provide suitable and appropriate accommodation to enable young people to perfect bail and that a range of accommodation options are available for children who require them.

The Department of Justice publishes the Annual Workload Statistics providing an overview of the workload provided by the Youth Justice Services and Custodial Services (Woodlands JJC) directorates within Youth Justice Agency. NICCY draws the Committee's attention to the recently published statistics, covering 2023/2024, as follows:

- The total number of individuals in custody decreased by 5.5% (110, 2022/23; 104, 2023/24).
- Of the children in custody during 2023/24, 43.3% were in care (36.5% were subject to a care order; 6.7% were voluntary accommodated).
- In 2023/24, there was a total of 3,534 days of custody provided by the JJC, 8.1% lower than in 2022/23 (3,844) and 42.9% lower than in 2019/20 (6,194). Of these days 6.2% were for PACE, 78.9% for remand and 14.9% for sentence.

³¹ CJINI, 'An announced inspection of Woodlands Juvenile Justice Centre', (2022) (Available at: <http://www.cjini.org/TheInspections/Inspection-Reports/2022/July-Sept/Woodlands-JJC-2022>, accessed on 6/1/25)

³² CJINI, 'The Operation of Bail and Remand in Northern Ireland' (2023) (Available at: [The operation of Bail and Remand in Northern Ireland](#), accessed on 4/12/24), p.16

³³ Carr, N. and McAlister, S. 'Tracing the Review: Developments in Youth Justice in Northern Ireland 2011-2021' (2021) (Available at: [TRACING THE REVIEW PDF \(1\).pdf](#), accessed on 20/12/24), p.67

- In 2023/24, 43.3% of children in custody were in care (36.5% were subject to a care order and 6.7% were voluntary accommodated), representing the highest rate in the five-year period. The proportion of children in custody who were not in care (56.7%) decreased on the previous year (58.2%).
- The proportion of admissions to the JJC involving children subject to care orders or in voluntary accommodation has increased by eight percentage points since 2022/23 (50.4%) to 58.4% in 2023/24. Similarly, the proportion of movements within the JJC attributed to looked after children increased by seven percentage points to 56.1% in 2023/24 (2022/23, 49.0%).
- The total number of admissions to the JJC was 4.5% lower in 2023/24 (214) than in 2022/23 (224). Overall movements within the JJC, that is new admissions plus internal changes of status, such as PACE to Remand, was 4.1% lower in 2023/24 (301) than in the previous year (314).
- During 2023/24, 114 children were held on remand in the JJC. Of these 114, 29 were remanded by Court, 85 were remanded under PACE (NI) 1989 before then being remanded by Court. Of the 114, two were given custodial sentences.
- In total, during 2023/24, seven custodial orders were served. Five of these orders involved a child being directly admitted from court to serve a sentence, and two who had previously been held on remand. From 2018/19 – 2023/24 63 individual children served a custodial order at the JJC – 14.2% of the total number admitted to custody which was 444.³⁴

Table 1 below show the admissions to the JJC by status, from 2019/20 to 2023/24, alongside the percentages.

Table 1: JJC admissions by status, 2019/2020 – 2023/24

Year	PACE	%	Remand	%	Sentence	%	Total
2019/20	197	66.1	95	31.9	6	2	298
2020/21	207	77.0	60	22.3	2	0.7	269
2021/22	165	79.7	42	20.3	0	0.0	207
2022/23	176	78.6	45	20.1	3	1.3	224
2023/24	180	84.1	29	13.6	5	2.3	214

Source: Northern Ireland Youth Justice Agency Annual Workload Statistics 2023/24³⁵

As previously raised, Article 37(b) of UNCRC states that imprisonment and detention of children shall be as ‘a measure of last resort’. NICCY appreciates that there has been considerable work and resources put into place to divert children from custody, and from the JJC, and that the statistics provided do reflect a reduction in the numbers of children entering custody, particularly in terms of the numbers of children in contact with the justice system, there remains concern about the use of the JJC for those on PACE and remand, as opposed to those who are sentenced.

NICCY understands that in Part 2, the Bill seeks to strengthen the existing presumption of bail for children and that bail will be granted unless certain conditions exist for both police

³⁴ Department of Justice, ‘Youth Justice Agency: Annual Workload Statistics, 2023-24’ (2024) (Available at: <https://www.justice-ni.gov.uk/publications/youth-justice-agency-annual-workload-statistics-2023-24>, accessed on 20/12/24)

³⁵ Ibid.

bail (Clause 5) and court bail (Clause 6). As previously outlined, the UNCRC is explicit when it comes to a child's deprivation of liberty:

*'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.'*³⁶

Furthermore, the UNCRC recommends that if deprivation of liberty is justified as a last resort, then it should be for older children only, time limited and subject to regular review.³⁷ For pre-trial detention, General Comment 24 outlines that 'children in pretrial detention for months or even years...constitutes a grave violation of Article 37(b)' of the UNCRC and should not be used except in the most serious cases, and even then only after community placement has been carefully considered.³⁸ Child protection measures should be the first option and the duration of pre-trial detention limited by law. As referenced above, the 2023 Concluding Observations outlined that the UK State Party and devolved administrations:

To take legislative and other measures to ensure that detention is used as a measure of last resort and for the shortest possible period of time and is reviewed on a regular basis with a view to its withdrawal; and

*To repeal the practice of remanding children into police custody, ensure that no child is held in police custody overnight and avoid the use and reduce the maximum duration of pretrial detention.'*³⁹

NICCY encourages the Committee to ensure that the provisions as outlined within Part 2 of the Bill meet international standards. NICCY welcomes any measure that will ensure that pre-trial detention is a necessary measure of last resort and encourages monitoring of such use in the criminal justice system, particularly regarding proportionality of conditions (Clause 5(3) and 6). NICCY suggests that the Committee ensure wider monitoring of the impact of the Bill, if passed, after Royal Assent and commencement, specifically where it relates to children and young people.

NICCY encourages the Committee to consider if explicit mention of the 'child's best interests' and 'as a last resort' should be inserted into other areas of Part 2 of the Bill, specifically relating to 'Remand in custody exceeding three months' in Article and that the Court must have regard to that in its decision making, and in 'Consideration of time spent on remand in custody' in Article 32A. NICCY agrees with the recommendations made by the NI Human

³⁶ United Nations, 'Convention on the Rights of the Child' (1989) (Available at: [Convention on the Rights of the Child | OHCHR](#), accessed on 13/1/25)

³⁷ United Nations Committee on the Rights of the Child, 'General comment No. 24 (2019) on children's rights in the child justice system' (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), pp.2-3

³⁸ Ibid., p.14

³⁹ United Nations Committee on the Rights of the Child, 'Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child' (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) :, accessed on 10/1/25), pp. 20-21

Rights Commission relating to the express mention of the child's best interests principle within relevant clauses of the Bill.

Clause 14 adds that a court must openly state its reasons for remanding a child in custody for more than three months. NICCY recommends the Committee ensure that this information is issued to the child in an appropriate and accessible manner to ensure their full understanding and participation in proceedings.

Finally, the EFM also states that 'the provisions relating to children's bail and remand and custody are aimed at delivering on a range of recommendations from relevant reports and reviews carried out in relation to the youth justice system. These were subject to public consultation at the time. The proposed changes have, therefore, been developed in order to assist with the implementation of the resulting recommendations and are not, in themselves, a new policy which requires a new or separate consultation.' NICCY would welcome further information and clarity on exactly what relevant reports and reviews have led to the development of the legislation, drafted in such a way, and why public consultation was not deemed necessary at this time, given other areas of the Bill have been subject to this process.

Part 3 – Live Links

NICCY notes that during the pandemic, the use of live links increased, through the provisions in the Coronavirus Act 2020, enabling any court or tribunal in this jurisdiction to allow any hearing if satisfied it is in the 'interests of justice' to proceed by way of live links. This continued a longstanding tool at the disposal of the judiciary on use of the live technology as special measures, subject to the availability of facilities. NICCY has previously welcomed the introduction and use of Remote Evidence Centres and the use of child friendly environments away from court for vulnerable witnesses. Part 3 of the Justice Bill introduces further provisions for allowing the use of live link technology in different situations than is currently in place – through police interviews and warrants for further detention.

The expansion of live links into other non-court facilities may improve the experience for children and vulnerable witnesses in general, with the appropriate safeguards and processes in place. However, NICCY has a number of questions and concerns over the potential of the expansion of the use of live links for children's rights and access to justice.

Expanding the use of live links – Clauses 20 and 21

Clauses 20 and 21, in certain circumstances, removes the requirement for a detainee to be 'in person' before a court to extend a pre-charge timeframe and for police interviews that is currently set out under PACE (NI) 1989. In Clause 20, the Bill outlines amendments to be made to PACE (NI) 1989 to enable further remote interviewing for police interviews and we understand that under the proposed changes, three conditions must be met before a live link will be used for police interviews, as follows:

- If a custody officer considers that the use of the live link is appropriate;
- If the arrested person has had advice from a solicitor on the use of the live link; and
- If the appropriate consent to use the live link has been given.

For pre-charge detention, there are further conditions, as follows:

- If a custody officer considers that the use of the live link is appropriate;
- If the arrested person has had legal advice on the use of the live link;
- If the appropriate consent to use the live link has been given; and
- It is not contrary to the interests of justice to use the live link.

In both situations, already existing safeguards and procedural practices would apply which are provided for under existing codes of practice.

NICCY encourages the Committee to consider an additional condition, that explicitly recognises that the use of the live link be appropriate when it is in the child's best interests, applying the same principle outlined in Part 2, in Part 3. We consider that additional text on the Bill is advisable in this case, alongside assurances that the child fully understands the proceedings alongside the production of appropriate guidance.

We also advise that the Committee request information on the Codes of Practice, and how children and young people are informed about the processes in place around live links and interviews, that those advising them are trauma and child rights informed, and that accessible information is issued to them.

We also encourage the Committee to ensure that a condition relating to competency to fully understand proceedings be considered as well as mandatory training on ACEs and trauma-informed practice and on children's rights be given to all those professionals dealing with children in these cases.

NICCY welcomes the conditions which include consent and the acquisition of legal advice/representation, however, encourage the Committee to fully consider the voice of the child, in terms of those providing the consent, and the parameters of that which is outlined in policy, the ability of children and young people to provide it and to understand what it is they are consenting to during legal proceedings in the context of their rights. The ability to consent to proceedings and processes must apply to those children and young people who are victims, and who are suspects, within the system.

Article 46ZA(1) outlines that the arrested person must have had advice from a solicitor on the use of the live link but does not give any further information on how that is to be obtained, and if there are any discrepancies within the advice given, what happens. Whilst understanding that a person, or in this instance, a child, must agree or act on the legal advice given, if, in meeting the criteria for consent, advice from the solicitor is that a live link is not suitable, but otherwise, appropriate consent has been received, and a custody officer considers that the use of the live link is also appropriate, it is unclear whether all three criteria must be met and be 'positive'. There are also concerns about the appropriate consent safeguard as outlined in the Bill.

Article 46ZA(2) (on use in detention) states that:

(2) In paragraph (1)(c), "the appropriate consent" means—

(a) in relation to a person who has attained the age of 18, the consent of the person;

(b) in relation to a person who has not attained the age of 18 but has attained the age of 14, the consent of the person and of the person's parent or guardian;

(c) in relation to a person who has not attained the age of 14, the consent of the person's parent or guardian.

(3) The consent of a person who has not attained the age of 18 (but has attained the age of 14), or who is a vulnerable adult, may only be given in the presence of an appropriate adult.

According to the above, consent for the use of live links must be taken from the person themselves if they are over 18; if a young person is 14 then their consent, plus their parent/guardian and for those who are below 14, the parent/guardian's consent only. There are also provisions for the consent of a person aged between 14 and 18 to be given in the presence of an appropriate adult. The EFM provides an explanation of the terms used including vulnerable adult and appropriate adult.⁴⁰ 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. We also encourage 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 does not consent, but the parent/guardian or appropriate adult does.

NICCY considers the need to ensure that the extension on the use of live links does not diminish this right and negatively affect access to justice for children and young people. NICCY further questions if the provisions are strong enough in the Bill as introduced to reflect the needs of individuals, including if the child has a disability, if English is not their first language, and how informed consent is given and received. We encourage the Committee to engage with children and young people on the current use of live links too and satisfy itself that the extension of live links to police interviews and warrants would not, in any case, jeopardize the right to a fair trial and access to justice.

Article 12 of the UNCRC holds that:

*'States Parties shall assure the child who is capable of forming his or her own views the right to express freely in all matters affecting the child, the views of the child being given due weight in accordance with age and maturity of the child. For this purpose the child shall in particular be afforded the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.'*⁴¹

General Comment 7 states that even the youngest child's rights must be respected.⁴² General Comment 24 also outlines that adequate and effective assistance should be provided by states, through well-trained professionals to children who experience communication barriers within the child justice system. This includes specific recommendations to ensure effective participation in proceedings, and the right to be heard:

⁴⁰ Justice Bill 'EFM' (2024) (Available at: [EFM - As Introduced](#), accessed on 26/11/24)

⁴¹ United Nations, 'Convention on the Rights of the Child' (1989) (Available at: [Convention on the Rights of the Child | OHCHR](#), accessed on 13/1/25)

⁴² United Nations Committee on the Rights of the Child, 'General comment No. 7 (2005): Implementing Child Rights in Early Childhood' (2005) (Available at: [General comment No. 7 \(2005\): Implementing Child Rights in Early Childhood | Refworld](#), accessed on 14/1/25)

‘A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge. Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Developments in child-friendly justice provide an impetus towards child-friendly language at all stages, child-friendly layouts of interviewing spaces and courts, support by appropriate adults, removal of intimidating legal attire and adaptation of proceedings, including accommodation for children with disabilities;’ and

‘Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.’⁴³

The ECHR Articles 5(3) and 5(4) provide that everyone arrested or detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and that everyone who is deprived of their liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of their detention shall be decided speedily by a court. There also exists important safeguards in the physical appearance of a person detained before a judge, allowing an individual to raise concerns.

NICCY has questions over the provisions relating to remote interviewing using live links so that a police officer can interview a suspect from a different location. Clear guidance would have to be in place prior to the use of live links in other locations, including their appropriateness, for example for interviews of children and young people who are suspects, and we would welcome information on how the Department and the PSNI intend to ensure this is in place and who would be present. Training must also be given for those involved in the process, including specifically on how to deal with vulnerable people, and children and young people.

NICCY encourages the Committee to consider how the use of live links balance with children and young people’s rights to access justice, how the interest of justice test is and will be considered, and how children are to effectively participate in and understand proceedings, in appropriate settings, with appropriate support systems in place.

NICCY also encourages the Committee to consider how the increased use of live links meets the best interests of children and young people and not in terms of efficiency and potential resource savings and would support the monitoring of such increased use on vulnerable people - children and young people. Further, appropriate safeguards must be in

⁴³ United Nations Committee on the Rights of the Child, ‘General comment No. 24 (2019) on children’s rights in the child justice system’ (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.9

place and children and young people must have full understanding and involvement in decision making and proceedings affecting them, with their opinions given due weight.

Part 4 – Administration of Justice

There are a number of areas of policy and law in this Part of the Bill. NICCY will provide a response to a number of areas including criminal records disclosure and the use of Registered Intermediaries (RIs).

Registered Intermediaries

It is NICCY's understanding that Clause 26 seeks to address a gap in law to enable the service provided by RIs in lower courts to continue to appeal hearings in higher courts without having to rely on the inherent court powers and judicial discretion to provide for this. RIs are communication specialists who assist vulnerable victims, witnesses, suspects and defendants with significant communication issues to communicate their answers more effectively during police interview and when giving evidence at trial. Historically, the most common vulnerabilities giving rise to a need for an RI relate to young age, learning disability and ASD. Whilst not directly related to this Bill, NICCY wishes to draw the Committee's attention to the increasing need for RIs in our justice system, and for the reasons of 'age' and disability and how these interplays with those in our society coming into contact with the justice system.

NICCY welcomes this Clause and encourages the Committee to support it.

Criminal record certificates – Clause 29

Clause 29, through amending the Police Act 1997, seeks to legislate for the current practice of the Independent Reviewer (IR), which was amended further to the 2019 UK Supreme Court judgement in the case of *R v Secretary of State for the Home Department and Others*.⁴⁴ The judgement means the automatic disclosure of out of court disposals and other warnings issued to children to be in breach of the ECHR.

For NI, it means that the IR must now also consider all non-court disposals awarded to a child regardless of whether they have convictions or disposals awarded after being 18 unless the removal of these details from a criminal record certificate would undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public. This has been the practice of the IR since 2020/21, further to Ministerial approval in 2020, and the associated Clauses in the Bill propose to put this into statute.⁴⁵

As the Committee will be aware, the Bill's EFM states that no consultation was held in relation to the proposals. Whilst NICCY appreciates that the changes have been made as a direct result of the Supreme Court case, and a full public consultation on the matter may not be appropriate, it is unclear the rationale for the second reason provided, as follows:

'The Department is aware that the Northern Ireland Children's Commissioner and other groups representing young people and groups that represent ex-offenders,

⁴⁴ Department of Justice, 'Independent Reviewer of criminal record information Annual Report, 2020-21' (2021) (Available at: [Independent Reviewer of criminal record information annual report 2020-21.pdf](#), accessed on 20/12/24)

⁴⁵ Ibid., p.3

such as NIACRO, would prefer, as an alternative to any scheme to filter out old and minor youth non-court disposals to see the full implementation of Recommendation 21 of the 2011 Youth Justice Review system in Northern Ireland (YJR).'

The EFM goes on to state that:

A previous Minister of Justice had determined rather than proceeding with Recommendation 21 of the YJR that a scheme of filtering out old and minor convictions and other disposals should be introduced, with specific safeguards built in for those with convictions and other disposals that occurred at a time when they were aged under 18.

In bringing forward an amendment to the legislation, the Minister of Justice considers that a blanket policy of not disclosing any other disposals occurring when a person was aged under 18 in any circumstances could potentially create safeguarding risks to vulnerable groups.⁴⁶

NICCY's position relating to criminal record certificates is clear, but the rationale for not consulting by the Department is less so.

NICCY encourages the Committee to seek out information relating to the decision-making process around not proceeding with Recommendation 21 of the YJR as outlined, the evidence and information gathered and used by the Department relating to an application process for children when they reach 18 which is not outlined in the EFM.

Youth Justice Review 2011

The 2011 YJR (the Review) noted the negative consequences of a criminal record for young people with regard to labelling and access to future education and employment prospects. The expansive nature of the criminal record regime in NI, which included 'diversionary' disposals was criticised, and the Review recommended that existing legislation should be reformed to reflect principles of 'proportionality, transparency and fairness'.⁴⁷

Recommendation 21 of the Review holds that:

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;*
- 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*

⁴⁶ Justice Bill 'EFM' (2024) (Available at: [EFM - As Introduced](#), accessed on 26/11/24)

⁴⁷ Carr, N., & McAlister, S. 'Tracing the Review: Developments in Youth Justice in Northern Ireland 2011- 2021' (2021) (Available at: [TRACING THE REVIEW PDF.pdf](#), accessed on 13/1/25), p.68

open to challenge, should be established. The decision to disclose and the assessment on which it is based, should be regularly reviewed.⁴⁸

While the current scheme adopts a different approach on the filtering of records received when a person was under 18 than had been in place during the 2011 Review, this still falls far short of the original recommendations of the Review, which advocated also for a ‘clean slate’ approach. Indeed, NICCY draws the Committee’s attention to the ‘Tracing the Review’ Report published in 2021, relating to criminal record certification and children:

‘Guidance issued by the Department of Justice (2020) outlines the factors that should be taken into consideration by the Independent Reviewer when deciding about what information should be disclosed in a criminal record. These include the nature of the position being applied for; the seriousness of the offence; the date of the offence and the age of the applicant at the time of the offence. With reference to records acquired as a juvenile, the guidance specifically states that the ‘best interest’ principle should be the primary consideration in these cases.

However, it is unclear how this ‘best interest’ principle applies when a person is over 18 and their record was acquired as a juvenile. Where the Independent Reviewer concludes that information should not be disclosed, they are required to inform the police, and provision remains under the relevant legislation (Section 113B (4), Police Act, 1997), for a chief officer to include information on the certificate where they ‘reasonably believe it to be relevant for the purpose for which the certificate is sought’. While there is a clear expectation that this would only occur in exceptional circumstances, it nonetheless provides a route through which information (including police intelligence) could be disclosed in a criminal record...

The role of the Independent Reviewer is specific to Northern Ireland, and the current system, while allowing for automatic referral still provides a mechanism through which juvenile diversionary disposals can be subject to disclosure.⁴⁹

The IR’s most recent annual report (2023-2024) shows the total number of cases received was 895, representing an increase of 11 cases (1.2%) on the previous reporting period. The IR received 12 representations of the cases reviewed. Of these cases, 165 were youth cautions, 146 appeals (applying to those over 18) and 584 were auto-referrals. Auto-referrals are cases that are automatically referred to the IR, when the information disclosed on the certificate relates only to convictions and/or diversionary disposals awarded when the applicant was aged under 18. In these cases, the IR decision as to whether convictions and/or diversionary disposals should be disclosed, is made prior to any certificate being issued to the applicant. In 558 (95.5%) of auto-referral cases, information was removed. In 26 (4.5%) of cases, information was retained on the certificates. Similarly, in relation to youth cautions and appeals, the majority of cases reviewed led to information being removed. Only a small number of those received had information retained for the purposes of safeguarding - 6 cases of youth cautions.⁵⁰

⁴⁸ Graham, J. et al, ‘A Review of the Youth Justice System in Northern Ireland’ (2011) (Available at: [13710 DOJ report.indd](#), accessed on 13/1/25), p.116

⁴⁹ Carr, N., & McAlister, S. ‘Tracing the Review: Developments in Youth Justice in Northern Ireland 2011- 2021’ (2021) (Available at: [TRACING THE REVIEW PDF.pdf](#), accessed on 13/1/25), p.71

⁵⁰ Department of Justice, ‘Independent Reviewer of criminal record information Annual Report, 2023-24’ (2024) (Available at: [IR Annual Report 2023 24.PDF](#), accessed on 20/12/24)

The Bill's EFM outlines that 'in bringing forward an amendment to the legislation, the Minister of Justice considers that a blanket policy of not disclosing any other disposals occurring when a person was aged under 18 in any circumstances could potentially create safeguarding risks to vulnerable groups.' NICCY is not aware of the specific safeguarding risks to vulnerable groups that an application process on 'wiping the slate clean' would have, and would encourage the Committee to fully evaluate the impact of having an application process available for those young people who have reached 18 to avail of, including the evidence that has led the Department to this position. This does not mean that one will be given, but that there is an application process by which they can utilise, and appropriate safeguards would continue to exist under the powers of the IR.

General Comment 24 recommends that States parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review. It states that:

'In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.'

*Furthermore, the Committee recommends that States parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review.'*⁵¹

Whilst NICCY appreciates that the current practice, and what Clause 29 seeks to put on statute, is a mechanism of independent review of children's criminal records, it does not constitute an application process as outlined by the UNCRC, nor the YJR – in that a 'wipe slate clean' application system would be put in place.

NICCY encourages the Committee to consider how the recommendations made by both the Youth Justice Review in 2011, CJI's 2015 Monitoring Report, the 'Tracing the Review' Report in 2021 and that contained within General Comment 24, can be fully realised in the Justice Bill.⁵² NICCY recommends the Committee consider an amendment to Part 4 and strengthens the current proposal to enable children and young people to *apply* for a 'clean slate' at 18.

⁵¹ United Nations Committee on the Rights of the Child, 'General comment No. 24 (2019) on children's rights in the child justice system' (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.12

⁵² For CJI's monitoring report please see: CJI, 'Monitoring of Progress on Implementation of the Youth Justice Review Recommendations' (2015) (Available at: [Monitoring of progress on implementation of the Youth Justice Recommendation \(second report\)](#)., accessed on 7/1/25)

Information and resources

NICCY is concerned about the level of information and knowledge available to children on the impact of disposals and cautions on their criminal records.

NIACRO have previously found that there was significant confusion about the impact of accepting and receiving a diversionary disposal, particularly around criminal records.⁵³ Many young people and their parents were under the illusion a record of such disposal will be erased when the young person turns 18 - with many reporting that they have been given this advice by the police officer or solicitor with whom they have engaged. Research commissioned by NIACRO in 2015 further reported that many people found the filtering arrangements to be 'complex and confusing'. Questions were raised about the extent to which young people were receiving appropriate (or any) legal advice when they accepted a caution or other types of 'diversionary disposal'. Many of the young people interviewed were under the erroneous impression that their record is 'wiped' when they turn 18, and few had heard of 'filtering arrangements'. Stakeholders in organisations working with young people described the use of terms such as 'diversionary' as creating the illusion of 'less consequence'.

An understanding of the nature and consequences of a decision is a central principle of informed consent. If a young person does not understand that a caution or diversionary youth conference may appear in a subsequent criminal record check this raises serious questions regarding the nature of informed consent when young people accept such disposals. This is particularly important as there is an in-built incentive for a young person to accept 'diversionary' measures because it avoids having to go to court.⁵⁴ There is an absence of information available as to whether or not children and young people fully understand the disposal process and what this means for them. NICCY would encourage the Committee to consider this.

The Department of Justice published guidance for the operation of the criminal records filtering review scheme which references the aims of the youth justice system, the best interests of children as a primary consideration and children's rights.⁵⁵ NICCY recommends that children and young people's guidance on filtering and criminal record certificates is also made available by the Department.

Furthermore, NICCY recommends that the Committee satisfy itself that age appropriate and clear information is issued to children on the different types of disposals and the impact that they may have, including the potential to appear on a criminal record (and reflecting Part 1, that their biometric data will be held).

Ministerial amendments at Consideration Stage

NICCY is aware that the Minister outlined plans to bring forward amendments on six policy areas, including the repeal of relevant provisions in the Vagrancy Acts (1824 and 1847), on rehabilitation periods, provisions relating to the participation and direction of organised

⁵³ NIACRO, 'NIACRO response to PPS Prosecution Quality Standards' (2015) (Available at: [NIACRO response to PPS Prosecution Quality Standards](#), accessed on 6/1/25)

⁵⁴ Carr, N., 'Criminal records and young people - never ending sentences?' (2015) (Available at: [Criminal records and young people - never-ending sentences? - Queen's Policy Engagement](#), accessed on 6/1/25)

⁵⁵ Department of Justice, 'Operation of the criminal records filtering review scheme' (2022) (Available at: [Operation of the criminal records filtering review scheme \(March 2022\).pdf](#), accessed on 6/1/25)

crime, wider use of live links, and the streamlining of arrangements for maintenance and understanding of offences that AccessNI cannot filter. NICCY is aware that a number of the amendments have been shared with the Committee and published on the Committee website.

NICCY has not had the opportunity to consider the amendments that have been made available, however has recently provided advice to government relating to the repeal of relevant sections of the Vagrancy Acts (1824 and 1847).⁵⁶

NICCY would be happy to give further evidence and advice to Committee should they find this of assistance on the Ministerial amendments in due course.

Scope of Bill – key issues for the Committee for Justice to consider

Training, information and guidance

Throughout the submission, NICCY has raised issues over children's access to information, guidance and resources about the changes that the Bill proposes, and some concerns with existing information that is made available to them. In order to comply with the UNCRC, Concluding Observations and relevant General Comments, NICCY recommends that the Committee ensure that the Department publish relevant information and guidance on the Bill should it pass Royal Assent. This could be through an amendment to the Bill or through the EFM. Guidance should be clear, unambiguous and subject to regular review. The guidance should also refer to and comply with the UNCRC, and be accessible to children and young people. NICCY considers that guidance on all Parts of the Bill be necessary. Similarly, NICCY wishes to draw the Committee's attention to the need for data collection.

Whilst at this stage the Bill is not proposing the creation of any new offences, it is proposing changes to existing practice and also on decision making (when it comes to bail, remand and custody of children) along with the creation of new orders, and new systems of data collection for example. The Committee will be well aware of the need for robust and up to date data which is publicly available in all areas of government. Adequate data capture and reporting of the impacts and effects of any new legislation is key not only for the allocation of resources, but also to ensure that the legislation is working as intended. NICCY urges the Committee to ensure that data is collected and disaggregated where appropriate on children and young people.

NICCY considers that there is a need for comprehensive training for anyone involved in new laws and enacting or progressing new legislation which will be effective only if that takes place in a comprehensive and routine manner. The UNCRC recommends that all professionals involved [in the administration of child justice] receive appropriate multidisciplinary training on the content and meaning of the UNCRC. This training should be 'systematic and continuous and not be limited to the information on the relevant national and international legal positions'. It should also include emerging information on causes of crime,

⁵⁶ NICCY, 'Advice to Government – Consultation on Repeal of the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847' (2024) (Available at: [Advice to Government – Consultation on Repeal of the Vagrancy Act 1824 and the Vagrancy \(Ireland\) Act 1847 - Niccy](#), accessed on 17/1/25)

the social and psychological development of children, disparities that may amount to discrimination and the availability of diversion measures and non-custodial sentences.

NICCY encourages the Committee to ensure that those professionals working with or engaging children when they come into contact with the policing and justice system are trained in children's rights, ACEs and trauma informed practice as a minimum, with specific training to be made available in relation to changes made through this Bill. Furthermore, NICCY encourages the Committee to consider the UNCRC's General Comment 14 on the child's best interests, published in 2013 and how it relates to all provisions in this Bill, and those to follow.⁵⁷

Minimum Age of Criminal Responsibility

NICCY is disappointed that the Justice Bill contains no provision to increase the Minimum Age of Criminal Responsibility (MACR) and sees this as a missed opportunity for the Assembly to progress this important legislative change. The significance of the MACR is that it recognizes that children have to attain emotional, mental and intellectual maturity to be held responsible for their actions. Children under the MACR do not have this capacity to fully understand the consequences of their actions.

The age at which children can be held criminally responsible in NI is 10 years old, one of the lowest in Europe. MACR remains at 10 years old in England and Wales, whereas it is 12 in Scotland and in the Republic of Ireland, with recent calls for this to be increased.⁵⁸ In June 2023, the UN Committee's Concluding Observations commented on MACR within the UK State Party and devolved governments that:

'The low minimum ages of criminal responsibility, set at 10 or 12 years, throughout all jurisdictions of the State party and the State party's position that 'children aged 10 can differentiate between bad behaviour and serious wrongdoing.'⁵⁹

It recommended that the State Party raise the minimum age of criminal responsibility to at least 14 years of age with General Comment 24 commending States that had MACR at a higher minimum age, of 15 and 16.⁶⁰

There was detailed examination of the MACR as part of both the Criminal Justice Review 1999 and the YJR in 2011. A phased approach was forwarded at the time, in that MACR

⁵⁷ United Nations Committee on the Rights of the Child, 'General Comment 14: (2013) on the right of the child to have his or her best interests taken as a primary consideration' (2013) (Available at: [General comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\) | Refworld](#), accessed on 14/1/25)

⁵⁸ As part of the Child Rights International Network's policy work on MACR, they undertake monitoring of the ages around the world. For Europe, please see: [Minimum Ages of Criminal Responsibility in Europe | CRIN](#), accessed on 7/1/25.

⁵⁹ United Nations Committee on the Rights of the Child, 'Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child' (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) :, accessed on 10/1/25), p.20

⁶⁰ United Nations Committee on the Rights of the Child, 'General comment No. 24 (2019) on children's rights in the child justice system' (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.6

should be raised to 12 with immediate effect and then further consideration should be given to an increase to 14 within 3 years. We further noted reference to an increase in MACR in the Department of Justice's Strategic Framework for Youth Justice published in 2022 and welcomed the Minister of Justice's consultation on the matter in the same year. NICCY formally responded to it, raising concerns over the appropriateness of the question relating to raising the age, but potentially having 'exceptions' permitted for the committal of serious offences.⁶¹ NICCY does not support NI having two different ages of criminal responsibility. To do so undermines all the best evidence available on the need to raise the age and does not adhere to the principle of the child's best interests. The UNCRC, through General Comment 24, have also been clear on this:

[That] developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making.

*The Committee is concerned about practices that permit the use of a lower minimum age of criminal responsibility in cases where, for example, the child is accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children's development... States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.*⁶²

The Committee has also observed that the idea of individualized assessment of criminal responsibility leaves much to the discretion of the court and results in discriminatory practices.⁶³

NICCY recognizes the work undertaken in NI on understanding and responding to ACEs so that there can be a more effective response to vulnerable children and families. There is strong evidence that children involved in the criminal justice system often experience multiple ACEs and to prevent further unacceptable behaviour these must be addressed in a child centred system away from the criminal justice system. Special protection measures for children under the MACR should address the root causes of their offending behaviour; support their parents/ caregivers; and should never be punitive or disciplinary in nature, nor entail deprivation of liberty. In some countries, this may require organizing additional or specific capacity-building initiatives for relevant social welfare agencies.⁶⁴ Investment in prevention and early intervention, as well as providing necessary, individualised, therapeutic support for those children that commit offending behaviour is preferred.

⁶¹NICCY, 'Advice: Consultation on Increasing the Minimum Age of Criminal Responsibility in Northern Ireland' (2022) (Available at: [DoJ-MACR-Consultation-NICCY-Dec-22-.pdf](#), accessed on 7/1/25)

⁶² United Nations Committee on the Rights of the Child, 'General comment No. 24 (2019) on children's rights in the child justice system' (2019) (Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en, accessed on 2/12/24), p.7

⁶³ Ibid.

⁶⁴ UNICEF, 'Systematic Responses to Children under the Minimum Age of Criminal Responsibility who have been (allegedly) involved in offending behaviour in Europe and Central Asia' (2022) (Available at: [Systematic Responses to Children under the Minimum Age of Criminal Responsibility who have been \(Allegedly\) Involved in Offending Behaviour in Europe and Central Asia.pdf](#), accessed on 7/1/25), p.5

NICCY strongly recommends that NI moves beyond minimum standards to a more fully children's rights compliant system that takes into account the neurological science and adverse childhood experiences and raises the minimum age of criminal responsibility to 16. However, due to the delay in progressing the YJR recommendations, and despite opportunities to legislate not materialising, NICCY does not consider this appropriate and NI must adhere to best international practice. Raising the age of criminal responsibility will not undermine the rights and experiences of victims. By raising MACR to 16 and re-investing resources into appropriate services and therapeutic interventions for young people, their families and communities we will achieve better outcomes for young people, increase the likelihood that children do not get involved in such behaviour and if they do it will not be repeated and communities will, in turn, be safer. Raising the age of criminal responsibility to 16 will progress NI's journey to being a rights compliant society where every child gets the best start in life.

A suggested amendment for the Committee to consider on MACR has been attached to this briefing in Appendix 1.

Equal Protection

It is also of disappointment to NICCY that legislation on equal protection has not been yet realised in NI. Despite multiple attempts, children do not have equal protection from assault as their peers in Scotland, Wales and the Republic of Ireland and other European countries. Alongside many others, NICCY has consistently provided advice to government on the need to repeal the defence of reasonable chastisement, and ensure equal protection from assault in the home for children and young people in NI. NICCY considers this to be one of the most fundamental and important changes to law that the NI Assembly can make for children's rights.

Article 19 of the UNCRC is unambiguous in stating that children should be afforded protection from all forms of harm, abuse and violence. In detailed guidance the UN Committee has been explicit that the use of 'moderate' or 'reasonable' chastisement directly conflicts with children's human dignity and cannot be justified. They define physical punishment as the use of physical force with the intention of causing discomfort or pain and note it can include hitting, smacking, slapping with a hand or implement, pinching, scratching, biting, pulling hair or boxing ears. The Committee view physical punishment as invariably degrading and given the distinct nature of children, their initial dependent and developmental state, their unique human potential as well as their vulnerability, all demand the need for more, rather than less, legal and other protection from all forms of violence.⁶⁵

In their regular examinations of how well the UK and devolved Governments are meeting their obligations under the UNCRC, the Committee has repeatedly stated that the issue of physical punishment must be properly addressed. Most recently, the Committee's 2023 Concluding Observations highlighted that the State Party:

⁶⁵ United Nations Committee on the Rights of the Child, 'General Comment 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment' (2006) (Available at: [General comment No. 8 \(2006\): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment \(Arts. 19; 28, Para. 2; and 37, inter alia\) | Refworld](#), accessed on 10/1/25), p.6

*'Explicitly prohibit, as a matter of priority, corporal punishment in all settings, including in the home, throughout the State party, including the overseas territories and the Crown dependencies of Guernsey and the Isle of Man, and repeal the legal defence of "reasonable punishment" in England and Northern Ireland.'*⁶⁶

NICCY draws the Committee's attention to the repeated recommendation of the UN Committee that this be addressed as a priority and we continue to highlight the well-established evidence base which demonstrates that physical punishment is not effective in managing challenging behaviour; that it results in poor outcomes for children and that it can escalate into injurious abuse and maltreatment.⁶⁷ Studies have also shown that countries who prohibit corporal punishment are associated with less youth violence than those who have not.⁶⁸ Research links physical punishment to risks of harm to children's cognitive, behavioural, social and emotional development, that stress from physical punishment for children can negatively affect their brain development and adverse impacts from physical punishment from childhood may last into adulthood.⁶⁹ Furthermore, more than 300 studies show associations between corporal punishment and a wide range of negative outcomes, while no studies have found evidence of any benefits.⁷⁰

Research also indicates that perceptions about physical punishment and the acceptability of hitting or smacking children are changing substantially. Findings show that the majority of adults and a higher number of parents in NI:

- View positive parenting as more effective than physical punishment;
- Feel physical punishment is unacceptable; and importantly
- Support law reform to give children the same protection under the law from all forms of assault, including hitting and smacking, as adults.⁷¹

Most recently, paediatricians in England and NI have called for an end to 'unjust and dangerous' laws on so called 'reasonable chastisement' calling for equal protection for children and young people against physical assault, such as smacking, hitting, and

⁶⁶ United Nations Committee on the Rights of the Child, 'Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child' (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#)), accessed on 10/1/25), p/10

⁶⁷ See: NICCY, 'Equal Protection Update' (2021) (Available at: [Equal Protection - update - Niccy](#)) and NICCY, 'Equal Protection for Children - Improving Outcomes' (2020) (Available at: [Equal Protection for Children – Improving Outcomes - Niccy](#))

⁶⁸ Elgar, F. et al. 'Corporal punishment bans and physical fighting in adolescents: an ecological study of 88 countries' [Corporal punishment bans and physical fighting in adolescents: an ecological study of 88 countries | BMJ Open](#)

⁶⁹ Australian Institute of Family Studies, 'What does the evidence tell us about physical punishment of children?' (2021) (Available at: [What does the evidence tell us about physical punishment of children?](#) | Australian Institute of Family Studies, accessed on 8/1/25)

⁷⁰ End Corporal Punishment, 'Corporal punishment of children: summary of research on its impact and associations' (2021) (Available at: [Research-effects-summary-2021.pdf](#), accessed on 14/1/25)

⁷¹ NICCY, 'Changing Perceptions: Equal Protection for Children' (2017) (Available at: [Changing Perceptions](#)), accessed on 10/1/25); NSPCC, 'Survey on Public Attitudes to Equal Protection in Northern Ireland' (2022) (Available at: [2](#), accessed on 10/1/25)

slapping.⁷² Their report showed that children who experience physical punishment are 2.6 times more likely to experience mental health problems than children who do not experience physical punishment. Children who experience physical punishment are more 2.3 times likely to go on to experience significant harm through more serious forms of physical abuse. NICCY strongly encourages the Committee to consider the wide-ranging evidence and research around the impacts of physical punishment on children as a ‘disciplinary’ measure.

There has been much progress in NI in strengthening measures to protect children, and others, from many forms of harm, abuse and violence and the Bill represents an important opportunity to ensure this significant gap in legal protection for children is addressed. NICCY fully supports, and repeats calls for, increased support for parents and carers.

NICCY requests that the Committee give full consideration to ensuring that Equal Protection under the law for children from all forms of assault, including physical punishment, is addressed within the Bill. This could be achieved through a repeal of the defence as set out in the Law Reform (Miscellaneous Provisions) (NI) Order 2006, in regard to the offence of common assault.⁷³

Abuse of Trust

During the Assembly’s scrutiny of the Justice (Sexual Offences and Trafficking Victims) (NI) Act 2022, NICCY expressed serious concern that ‘abuse of trust’ offences required amendment in order to offer effective protection to children and young people. Those provisions make it an offence for persons aged 18 or over to intentionally behave in certain sexual ways in relation to a child under 18, where they are in a position of trust in respect of the child. The provisions define a person in a position of trust, and set out the related activities and responsibilities of a person in a position of trust. They provide that a person is in a ‘position of trust’ if they are ‘regularly involved in caring for, training, supervising or being in sole charge of such persons,’ within a number of prescribed statutory settings. According to the Department of Justice, the offences were not originally intended to cover all situations where an adult might have contact with, or a supervisory role over children. Instead, they were intended to capture those relationships where there is an imbalance in the power held by the child and adult, and, therefore, scope for that position of trust to be abused. Prior to 2022, the offences covered statutory settings where government has a duty to protect young people in its care, for example: residential care homes; educational institutions; detention facilities. The 2022 Act expanded the scope by adding further categories – capturing those who ‘coach, teach, train, supervise or instruct’ a person under 18, on a regular basis, in a sport or a religion.⁷⁴

During the Committee Stage, NICCY stated that legislation must both reflect contemporary configurations of how services to children are delivered on behalf of, or are funded by, statutory and government agencies (through for example, voluntary, community, youth,

⁷² Royal College of Paediatrics and Child Health, ‘Paediatricians call for an end to unjust and dangerous smacking laws’ (2024) (Available at: [Paediatricians call for an end to unjust and dangerous smacking laws | RCPCH](#), accessed on 6/1/25)

⁷³ See: The Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (Available at: [The Law Reform \(Miscellaneous Provisions\) \(Northern Ireland\) Order 2006](#), accessed on 10/1/25)

⁷⁴ Department of Justice, ‘Abuse of position of trust offences: extension of the law: Summary of call for evidence responses and way forward’ (2024) (Available at: [abuse of position of trust summary of responses.pdf](#), accessed on 10/1/25)

sporting, arts and faith based organisations) and must demonstrate a clear understanding of the power dynamics of sexual abuse when this is perpetrated by a person in a position of trust, regardless of the setting. As highlighted in our written submission to the then Committee and 2019 advice to the Department, there is clear evidence of the vulnerability to exploitation and abuse of older children in such settings.⁷⁵ Whilst it was welcome that the abuse of trust offences were amended through the 2022 Act, covering religious and sporting settings, it was disappointing that other environments were not covered. Indeed, in June 2023, the UN Committee published its Concluding Observations recommending that, in NI, government strengthen the implementation of legislation protecting children from ‘abuse of trust’ in all environments and extracurricular activities.⁷⁶ This remains NICCY’s position.

We wish to highlight to the Committee that following the UK ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse European (Lanzarote Convention) that Article 18(1b) of this sets out that necessary legislation must be in place to ensure that abuse of a recognised position of trust, authority or influence over a child is criminalised.⁷⁷ The Lanzarote Committee who monitor implementation of the Convention provide detailed direction on this and define ‘the circle of trust’ as including a relationship of trust which has been established with the child in the context of a professional activity and where unequal physical, economic, religious or social power is exploited and abused. The Committee highlights the Convention’s Explanatory Report which sets out that such relationships, including within voluntary and youth organisation settings, are within the remit of the Convention and ‘that children in certain relationships must be protected, even when they have already reached the legal age for sexual activities, even when the person involved does not use coercion, force or threat’.⁷⁸

NICCY are aware that the Department issued a call for evidence on whether the current law on abuse of position of trust should be extended beyond the new categories of sport and religion introduced as part of the Justice (Sexual Offences and Trafficking Victims) Act (NI) 2022. The summary of responses was published in November 2024 which found that of the 13 responses, the majority were of the view that the provisions should be extended to a variety of settings. The Department’s position remains that, ‘without evidence of a specific problem or an identified risk, at this stage we do not consider it would be appropriate to amend the legislation to add additional categories.’ NICCY finds this position troublesome and does not consider that widening the current scope of abuse of trust offences will result in an increase in the age of consent.

⁷⁵ NICCY, ‘Justice (Sexual Offences and Trafficking Victims) Bill Oral evidence to the Justice Committee’ (2021) (Available at: [Equal Protection - Media Q&A](#), accessed on 10/1/25)

⁷⁶ United Nations Committee on the Rights of the Child, ‘Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child’ (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) :, accessed on 10/1/25), p.11

⁷⁷ Council of Europe, ‘Convention on the Protection of Children against sexual exploitation and Sexual Abuse’ (2007) (Available at: <https://www.coe.int/en/web/children/lanzarote-convention>, accessed on 10/1/25)

⁷⁸ Council of Europe, ‘Explanatory report to the Council of Europe Convention on the Protection of Children against sexual exploitation and Sexual Abuse’ (2007) (Available at: [CETS 201 - Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#), accessed on 10/1/25)

NICCY encourages the Committee to further explore how such abuse of trust protections could be secured within the Bill's scope, particularly as it relates to children.

Minors Out of Court Settlements

NICCY welcomed the opportunity to respond to the consultation by Department of Justice of Court approval of minor settlements (compensation settlements agreed for personal injuries in respect of children where legal proceedings have not issued) in 2021.⁷⁹ We welcomed the conclusion made by the Department in the consultation outcome document, that 'the current Minister believes that legislative intervention would be appropriate, particularly in light of the consultation responses'. NICCY is concerned however that there is no clear vehicle for this to be legislated on this mandate.

There has been a lack of absolute certainty as to numbers of children and young people having compensation decided without Court review. The Consultation concluded there appeared to be around 100 settlements of compensation to children per year that are not submitted for court approval. There are indications from Department for Communities research that numbers may be much higher.⁸⁰

Given this, NICCY considers that in any event a considerable number of children and young people in NI are involved. It is of course impossible to know how many of these were under-compensated, mainly because of the lack of systemic review of such matters. It is clear though that without Court protection it is also impossible to know there is adequate protection for the best interests of children and young people deserving of compensation. NICCY is aware that concern has been expressed as to potential costs of all cases being brought to Court. It is the position of NICCY that judicial protection should be applied to all, equally. For the same reason the Commissioner does not agree that a threshold should be applied in respect of the value of cases subject to judicial scrutiny. Whilst parents endeavour to do the best for the children it is important that judicial processes support them fully.

It is also clear that young people in NI under the age of 18 entitled to compensation for injury experience different levels of protection by virtue of whether an adult decides to bring the case to Court. Such decisions cannot be made without proper information and informed advice. NICCY believes this should be resolved and would be happy to engage further on this matter should this be helpful for the Committee as part of its deliberations.

In reaching these conclusions NICCY gives heed to a recommendation within the Review of Civil Justice in NI Report of September 2017 that explicitly stated:

*'Legislation ... be brought forward to compel a requirement for court approval for all legal cases involving a settlement or award of damages to minors.'*⁸¹ Regulation of this matter should be statutory, not voluntary.

Therefore, NICCY considers that legislation requiring such judicial protection is important in protecting children's rights and that having settlement funds managed under the direction of the court, until the child reaches the age of 18, closes the lacuna that currently exists; a

⁷⁹ NICCY, 'Court approval of minor settlements' (2021) (Available at: [Court approval of minor settlements - Niccy](#), accessed on 10/1/25)

⁸⁰ Department of Justice, 'Court approval of minor settlements (Compensation settlements agreed for personal injuries in respect of children where legal proceedings have not issued)' (2021) (Available at: [Consultation on court approval of minor settlements](#), accessed on 1/12/24), p.8

⁸¹ *Ibid.*

lacuna that can lead to breaches of children's rights. NICCY also considers there is within this matter an issue of how 'parent' is defined by any resulting legislation.

Furthermore, NICCY sees legislative reform as an opportunity to address a matter not considered within the Consultation; in instances of accidents involving untraced drivers, where the compensating body can decide whether awarded funds are placed under the supervision of the court.

NICCY urges the Department, of Justice and in turn, the Committee, to take the opportunity to review this matter when progressing legislative reform so to avoid any differential treatment.

Spit and Bite Guards

Children cannot be treated the same as adults within the policing and criminal justice system. It is widely recognised that they must be treated differently because of their distinct vulnerabilities, evolving capacities and greater developmental needs and this is reflected in our justice system. Naturally, this will affect a child's ability to cope in stressful situations involving police and law enforcement.

The use/application of a Spit and Bite Guard (SBG) not only heightens the fight or flight response but could also risk subsequent psychological damage. This is compounded by the fact that children who come into contact with the police are some of the most vulnerable in society - many may have experienced abuse or violence, are victims of criminal exploitation, or have special educational needs (SEN), communication needs or mental health conditions. The UN Committee, in its June 2023 Concluding Observations, recommended that the UK State Party, and devolved governments:

*'Take legislative measures to explicitly prohibit, without exception, the use of: (i) harmful devices, including spit hoods, plastic bullets and taser guns, attenuating energy projectiles and other electrical discharge weapons, against children; (ii) strip searches on children; and (iii) solitary confinement, isolation, seclusion and restraint as disciplinary measures in schools and alternative care and health-care settings.'*⁸²

Following two years' use as a temporary measure, in June 2022 the Police Service of NI (PSNI) decided to continue the use of SBGs as a permanent tactical option including on children and young people. Between October 2022 and September 2023, 160 SBGs were deployed, rising to 182 in the same period 2023/24, a 14% increase. Of the 182, 3% of all deployments of SBGs involved children 17 and under, 19% deployed on those aged 18-24.⁸³ According to the PSNI, age may be 'officer perceived'.

NICCY notes the reduction in the use of SBGs on children since recording began in 2020, however remains concerned over the increase in their use generally, and that they remain available for use on children by police. There has been strong opposition and concern

⁸² United Nations Committee on the Rights of the Child, 'Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland: Committee on the Rights of the Child' (2023) (Available at: [Concluding observations on the combined 6th and 7th periodic reports of the United Kingdom of Great Britain and Northern Ireland](#) ;, accessed on 10/1/25), p.9

⁸³ PSNI, 'Use of Force by the Police in Northern Ireland: 1 October 2023 to 30 September 2024' (2024) (Available at: [Use of Force by the Police in Northern Ireland](#), accessed on 10/1/25)

regarding the use of this on children and young people including from the Police Ombudsman who has stated that they should be prohibited.⁸⁴ The NI Policing Board's Human Rights Advisor published a review of the PSNI's use of SBGs in 2022, making 21 strategic and operational recommendations. Recommendation 3 stated that, 'It is difficult to see how the use of a Spit and Bite Guard will ever be in the interests of a child and therefore the Guidance should be amended to set out the circumstances where this might, possibly, be true.'⁸⁵ We further note the recent recommendation made by the Human Rights Reviewer to the NI Policing Board in their 2024 report on Policing and Children and Young People, that:

*'The PSNI should review of all of its policies and practices in order to minimise the use of force, particularly the use of weapons, against children under the age of 14. In the meantime, the PSNI should amend its policy to ensure that, as far as possible, spit and bite guards are never used on any child younger than 14 years of age.'*⁸⁶

The PSNI have previously indicated that as a mitigation they plan to improve their training (to include that on ACEs, all incidents involving young people will be examined by senior officers. Additionally, PSNI have committed to, 'continue to scrutinise the use of SBGs on children through a proposed performance accountability framework'.⁸⁷

NICCY has previously welcomed the PSNI's instructions around the use of SBGs, where officers or staff are aware that a member of the public is under 18, the presumption will be that a SBG should not be used, and that it must be demonstrably necessary to be used.⁸⁸ However, we understand there is still risk for potentially wrongly identifying a young person as over 18.

It is NICCY's continuing position that the presumption that SBGs will not be used on children, is too vague and leaves scope for routine use on children and young people. There is a considerable risk that their use of this method will add to young people's belief that PSNI discriminate against them, treat them unfairly and disrespectfully. It is our view that the use of SBGs by the PSNI on children and young people is not in compliance with the UNCRC and other international and domestic children's rights standards and as such, their use should be banned.

We encourage the Committee to consider legislation to ban their use on children and young people through an amendment to this Bill.

⁸⁴Police Ombudsman for Northern Ireland, 'Review of Spit and Bite Guards identifies concerns' (2021) (Available at: [Review of Spit and Bite Guards identifies concerns](#), accessed on 10/1/25)

⁸⁵ NI Policing Board, 'A Review of PSNI's Use of Spit and Bite Guards by the NI Policing Board's Human Rights Advisor' (2022) (Available at: [A Review of PSNI's Use of Spit and Bite Guards by the NI Policing Board's Human Rights Advisor](#), accessed on 10/1/25), p.4

⁸⁶ NI Policing Board, 'Human Rights Review of Children and Young People and Policing' (2024) (Available at: [Final Human Rights Review of Children and Young People and Policing.pdf](#), accessed on 12/12/24) pp.29-30

⁸⁷ PSNI, 'Equality Impact Assessment on the use of spit and bite guards by the PSNI: Final Report' (2022) (Available at: [Equality Impact Assessment - Final Report - The use of Spit and Bite Guards by the Police Service of Northern Ireland \(V1.3\)](#), accessed on 10/1/25), p.64

⁸⁸ PSNI, 'PSNI Manual of Policy, Procedure and Guidance on Conflict Management, Chapter 16: Spit and Bite Guards' (2021) (Available at: [Chapter 16 Spit and Bite Guards.pdf](#), accessed on 10/1/25)

Conclusion

The Bill addresses some of the measures that can safeguard children and young people's most fundamental rights – rights within the justice system and on privacy. NICCY is of the view that the current inconsistency in legislative protections, do not recognise the vulnerability of all children and there is scope for the NI Assembly to meet obligations under the UNCRC and the opportunity to do so provided by this Bill should be utilised. We encourage the Committee to consider and act upon the voice of the child throughout this, recognising the array of UNCRC rights afforded to them. We recommend that the Committee engage with children and young people, particularly those with lived experience through the Committee Stage of this Bill.

If the Committee require any further information from NICCY on any of the issues raised within this paper, the future planned amendments, or any other matters relating to youth justice and children's rights, NICCY are more than happy to provide this.

Summary of recommendations

Part 1

1. NICCY recommends that the Committee consider the proportionality of the proposed retention periods on children and young people, in the context of their best interests, rights and in terms of reoffending. This must also be in line with other relevant legislation, such as the Data Protection Act 2018.
2. NICCY encourages the Committee to consider what the current system of biometric data of children involved in these orders and schemes are, what the changes propose, and if the provisions in the Bill may lead to a difference in retention regimes. Furthermore, we question the necessity of retention of biometric data of children who have been through the diversionary youth conference system, or through Community Restorative Justice Schemes, given they are to be diversionary, are non-custodial, and have not been issued through a trial, but because there is an admission of guilt and a reasonable chance at conviction.
3. NICCY encourages the Committee to seek additional information from the Department on the inclusion of cautions and diversionary disposals here, given their inherent nature of being *diversionary*.
4. NICCY recommends that the Committee satisfy itself that the powers to extend under Clause 63H are in line with the child's best interests, proportionate and their Article 40 rights specifically. We further recommend that information is collected and issued to the person if an extension has been granted.
5. NICCY recommends that the Committee considers strengthening the monitoring powers of the Biometrics Commissioner with a particular role over the data retention from vulnerable persons, including children and young people. This could also include a role in considering applications for destructions from individuals as advised by the NIHRC.
6. NICCY recommends that the Committee should be satisfied that the retention periods proposed by the Bill do not in any way, further stigmatise children and young

people.

7. NICCY encourages the Committee to ensure that children and young people have the right to appeal the retention of their data and information on this process be made available.
8. NICCY encourages the Committee to ensure that specific guidance will be produced on the new retention periods for biometrics, DNA and photographs to the public, and specifically, to children and young people. The Committee should also ensure that all children, subject to having their biometric and DNA data taken and retained, consent to doing so.

Part 2

1. NICCY encourages the Committee to ensure that the provisions as outlined within Part 2 of the Bill meet international standards and children and young people's rights.
2. NICCY recommends that the Committee of Justice seek clarification on Clauses 5 and 6, particularly with regard to the 'serious threat to public order', who is issuing or causing the threat and the implications of such.
3. NICCY encourages the Committee to consider the other existing orders that are at the courts disposal for children to ensure that they are in the child's best interests, and that there is adequate supervision within community settings to support reintegration and diversion from the justice system in the future.
4. NICCY encourages the Committee to ensure that there are robust monitoring processes in place to ensure that children and young people subject to YSCOs, are so as a measure of last resort, in line with the Strategic Framework for Youth Justice and the UNCRC. The Committee should consider if this should be made explicit either on the face of the Bill, in the EFM or within associated guidance.
5. NICCY encourages the Committee to consider and explore how the powers under the Children's Services Co-Operation Act (NI) 2015 could be better utilised in order to ensure suitable alternative accommodation is provided by the NI Executive.
6. NICCY recommends that the Committee explore whether or not legislative change is required to establish a Secure Care Centre as a new category of establishment, with bespoke standards and legislation developed to reflect its specific functions and underpin the ethos of a relationship-based, trauma-informed, therapeutic care Centre.
7. NICCY recommend that the Committee seek an update on the position of both the Department of Justice and Health on the future of the RCJC in the context of the Independent Review of Children's Social Care.
8. NICCY recommends that the Committee seek to remove the Woodlands JJC as a designated 'safe place'.

9. NICCY recommends that Health and Social Care Trusts should discharge their statutory duty to provide suitable and appropriate accommodation to enable young people to perfect bail and that a range of accommodation options are available for children who require them.
10. NICCY suggests the Committee explore the findings of NICCY's Formal Investigation and how the provisions as outlined within the Justice Bill meet the associated recommendations.
11. NICCY recommends that an amendment is sought by the Committee or the Department in the Justice Bill that suitable accommodation is provided within a reasonable timeframe if a child or young person is released on bail, in line with the NIHRC recommendation.
12. NICCY recommends that the Departments of Health and Justice ensure that suitable non-custodial accommodation arrangements are available for children and young people awaiting trial, who cannot return to their homes, in line with NI Human Rights Commission recommendation.
13. NICCY encourages the Committee to consider if explicit mention of the 'child's best interests' and 'as a last resort' should be inserted into other areas of Part 2 of the Bill, specifically relating to 'Remand in custody exceeding three months' in Article and that the Court must have regard to that in its decision making, and in 'Consideration of time spent on remand in custody' in Article 32A.
14. NICCY supports the recommendations made by the NI Human Rights Commission relating to the express mention of the child's best interest's principle within relevant clauses of the Bill.
15. NICCY recommends the Committee ensure that, in the realisation of Clause 14 that a court must openly state its reasons for remanding a child in custody for more than three months, that information is issued to the child in an appropriate and accessible manner to ensure their full understanding and participation in proceedings.

Part 3

1. NICCY encourages the Committee to consider an amendment adding a further condition, that explicitly recognises that the use of the live link be appropriate when it is in the child's best interests, alongside assurances that the child fully understands the proceedings alongside the production of appropriate guidance.
2. NICCY recommends the Committee request information on the Codes of Practice relating to live links, and how children and young people are informed about the processes in place around live links and interviews, that those advising them are trauma and child rights informed, and that accessible information is issued to them.
3. NICCY recommends the Committee ensure that a condition relating to competency to fully understand proceedings be considered as well as mandatory training on ACEs and trauma-informed practice and on children's rights be given to all those

professionals dealing with children in these cases.

4. 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.
5. 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 does not consent, but the parent/guardian or appropriate adult does.
6. NICCY encourages the Committee to engage with children and young people on the current use of live links too and satisfy itself that the extension of live links to police interviews and warrants would not, in any case, jeopardize the right to a fair trial and access to justice.
7. NICCY encourages the Committee to consider how the use of live links balance with children and young people's rights to access justice, how the interest of justice test is and will be considered, and how children are to effectively participate in and understand proceedings.
8. NICCY encourages the Committee to consider how the increased use of live links meets the best interests of children and young people and not in terms of efficiency and potential resource savings and would support the monitoring of such increased use on vulnerable people.

Part 4

1. NICCY encourages the Committee to ensure that Part 4 meets the standards as outlined in the UNCRC and specifically, General Comment 24.
2. NICCY encourages the Committee to ensure that Recommendation 21 of the YJR be fully implemented through this Bill, via Committee or Departmental amendment to ensure an application process for a 'wipe slate clean' at 18 be available in NI.
3. NICCY encourages the Committee to seek out information relating to the decision-making process around not proceeding with Recommendation 21 of the YJR as outlined, the evidence and information gathered and used by the Department of Justice relating to an application process for children when they reach 18 which is not outlined in the EFM.
4. NICCY would encourage the Committee to consider the availability and accessibility of information available to children and young people to enable them to fully understand the disposal process, criminal records regimes and what it means for them.
5. NICCY recommends that children and young people's guidance on filtering and criminal record certificates is also made available by the Department of Justice.

6. NICCY recommends that the Committee satisfy itself that age appropriate and clear information is issued to children on the different types of disposals and the impact that they may have, including the potential to appear on a criminal record (and reflecting Part 1, that their biometric data will be held).

Scope of the Bill

1. NICCY recommends that the Committee encourage the Department of Justice to undertake a Childs Rights Impact Assessment on the Bill, as well as any associated amendments.
2. NICCY recommends that the Committee satisfy itself that the necessary training and guidance will follow the passage of this Bill, for all agencies and organisations involved in its commencement and operation. This must include information and guidance being made available for children and young people, and those who work with them.
3. NICCY suggests that the Committee ensure wider monitoring of the impact of the Bill, if passed, after Royal Assent and commencement, specifically where it relates to children and young people.
4. In order to comply with the UNCRC, Concluding Observations and relevant General Comments, NICCY recommends that the Committee ensure that the Department of Justice publish relevant information and guidance on the Bill should it pass Royal Assent. This could be through an amendment to the Bill or through the EFM. Guidance should be clear, unambiguous and subject to regular review. The guidance should also refer to and comply with the UNCRC and be accessible to children and young people. NICCY considers that guidance on all Parts of the Bill be necessary.
5. NICCY recommends that the Committee for Justice engage with UN Committee's development of their new General Comment, number 27 on children's access to justice, and to consider this Bill, and any subsequent within this mandate, in the context of children's rights and access to justice.
6. NICCY urges the Committee to ensure that data is collected and disaggregated where appropriate on children and young people.
7. NICCY recommends that the Committee consider introducing an amendment to Article 3 of the Criminal Justice (Children) (NI) Order 1998 (the age of criminal responsibility) from 10 to 16.
8. NICCY recommends that the Committee consider abolishing the defence of reasonable chastisement, and repeal Section 2 of The Law Reform (Miscellaneous Provisions) (NI) Order 2006 and seek assurances from the Departments of Health and Justice on the introduction of Family and Parenting Support Strategy, including adequate resources.
9. NICCY recommends that the Committee consider an amendment to the Justice Bill relating to Minors Out of Court Settlements and closing the loophole in legal

protection for children and young people.

10. NICCY encourages the Committee to further explore how such abuse of trust protections could be secured within the Bill's scope, particularly as it relates to children.
11. NICCY encourages the Committee to consider legislation to ban the use of Spit and Bite Guards on children and young people through an amendment.
12. NICCY encourages the Committee to speak directly with children and young people, particularly those with lived experience, of all aspects of the Justice Bill that engage their rights.

Appendix 1: Suggested Committee amendment on raising the Minimum Age of Criminal Responsibility

After Clause X insert –

'Minimum Age of Criminal Responsibility.

XA. In Article 3 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (age of responsibility) for "10" substitute "16".'