

FROM THE OFFICE OF THE JUSTICE MINISTER



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Dear Kathy,

**Justice Bill: Delegated Powers for Departmental Amendments**

As requested by the Committee, please find attached a copy of the Delegated Powers Memorandum for the planned Departmental amendments to the Justice Bill.

We hope that this will assist with Committee scrutiny of the additional provisions.

Officials would also be happy to meet with the Clerk and the Examiner of Statutory Rules should any queries arise.

Yours sincerely

**DAVID GRAHAM  
DALO**

**Enc.**

## DELEGATED POWERS MEMORANDUM

### DEPARTMENTAL AMENDMENTS TO JUSTICE BILL

#### INTRODUCTION

1. The Bill gives effect to the Justice Minister's desire to improve the operation and effectiveness of the justice system.
2. At its core are four key aims, which are:
  - a) to amend retention periods for DNA and biometric material;
  - b) to make changes to bail and custody arrangements for children and young people;
  - c) to improve services for victims and witnesses; and
  - d) to improve the efficiency and effectiveness of aspects of the justice system.
3. The Bill is made up of 34 clauses over five parts and four Schedules. The Bill amends some previous legislation as well as creating new freestanding provisions.
4. Part 1 and Schedules 1 and 2 of the Bill relate to the retention of Biometric Data.
5. Part 2 of the Bill is concerned with bail and custody arrangements for children.
6. Part 3 of the Bill relates to Use of Live Links by police.
7. Part 4 of the Bill relates to the Administration of Justice and includes provisions relating to policing, criminal proceedings, legal aid, criminal record certificates and court security.
8. Finally, Part 5 of the Bill deals with Final Provisions, relating to supplementary regulations; Interpretation; Commencement; and the Short Title of the Bill.

9. A number of additions to the Bill are planned by way of proposed Departmental amendments at Consideration Stage. These include:
- (i) additions to the biometric provisions in Part 1 of the Bill, identified during stress testing as necessary to improve the operation of the new framework and ensure it operates as intended.
  - (ii) Provisions to tackle those who participate in or direct serious organised crime (new Clause 19A).
  - (iii) Provisions to allow for the repeal of vagrancy legislation (the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847) (new Clause 23A).
  - (iv) Provisions to transfer the powers and functions contained in section 43 of the Justice and Security (Northern Ireland) Act 2007 from SOS to DOJ to manage the accreditation process for organisations wishing to deliver Restorative Justice (new Clause 26A).
  - (v) Provisions to amend rehabilitation periods in the Rehabilitation of Offenders (NI) Order 1978 to shorten existing rehabilitation periods and to allow more convictions to be able to become spent (new Clause 26A).
  - (vi) Provisions to streamline arrangements for the maintenance and ease of understanding of the existing list of 1200+ sexual and violent offences that cannot be filtered from disclosure certificates by AccessNI (new Clause 29A); and
  - (vii) Provisions to facilitate the wider use of video and audio conferencing systems (commonly referred to as live links) within the courts (criminal and civil) and Tribunals sitting within the Department's remit, thereby allowing the cessation of reliance upon similar provisions currently operated utilising the Coronavirus Act 2020.
10. Although a Delegated Powers Memorandum (DPM) is not normally produced for amendments, the Minister has on this occasion agreed to a Committee request for a DPM to be prepared for the Committee's benefit to assist with their scrutiny of the additional provisions.

11. The following provisions for delegated legislation have been identified in the text of the planned amendments:

Clause	Title	Assembly Procedure
<b>1 – 3 and Schedules 1 and 2</b>	Biometric data: Retention etc.	No delegated powers in additional biometric provisions.
<b>19A(7)</b>	Organised crime groups: definitions.	Draft laid before and approved by resolution of the Assembly.
<b>23A</b>	Repeal of public order offences (vagrancy)	No delegated powers provisions in text of amendment
<b>26A</b>	Accredited providers of restorative justice services.	No delegated powers provisions in text of amendment
<b>28B</b>	Applications in respect of certain sentences otherwise excluded from rehabilitation	Draft laid before and approved by resolution of the Assembly.
<b>29A</b>	Matters to be included in criminal record certificates	Negative resolution.
<b>5(4)(b)</b>	Live links: Giving a direction under this chapter	Draft laid before and approved by resolution of the Assembly.
<b>6(3) &amp; (4)</b>	Presumption of giving evidence by live link in certain cases	Draft laid before and approved by resolution of the Assembly

## **DELEGATED PROVISIONS**

### **PART 2A: ORGANISED CRIME GROUPS**

#### **Clause 19A(7): Organised crime groups: definitions**

##### **Purpose of delegated legislation**

12. A power to allow the Department to amend the definition of criminal activities.

##### **Reason for delegated legislation**

13. The Department considers it prudent to include this power to enable the definition of criminal activity to be readily updated, should this be required in the future, to reflect changes in criminal behaviour associated with organised crime behaviour.

## **Assembly control**

14. By virtue of clause 19A(8), the regulations at clause 19A(7) cannot be made unless laid in draft before, and approved by, the Assembly.
15. This level of scrutiny is considered appropriate due to the nature of the provision.

## **PART 4: ADMINISTRATION OF JUSTICE**

### **Clause 28B: Applications in respect of certain sentences otherwise excluded from rehabilitation**

#### **Purpose of delegated legislation**

16. A power to allow the Department to provide in regulations for the establishment of a courts-based review / appeal mechanism for certain convictions for sentences of over 10 years imprisonment that cannot become spent under the provisions of the Rehabilitation of Offenders (Northern Ireland) Order 1978, by way of insertion of new Article 7A of the 1978 Order.
17. The regulations will include the process for application; timeframe for applications; fees that might be applicable; who will be responsible for making a determination of the application; any limitations on the length or type of convictions that cannot be considered under the regulations; etc.

#### **Reason for delegated legislation**

18. The Department considers that it is appropriate to set out the circumstances under which an application for review can be made in regulations, given the detailed nature of the circumstances to be complied with as part of any application being brought, and to enable any updates or amendments to be made more efficiently if considered necessary in the future.

## **Assembly control**

19. New Article 7A(9) indicates that regulations may not be made under this Article unless a draft of the regulations has been laid before, and approved by, a resolution of the Assembly.
20. This level of scrutiny is considered appropriate due to the nature of the provision being brought forward, which the Department considers should be the subject of Assembly debate and agreement.

## **Clause 29A: Matters to be included in criminal record certificates**

### **Purpose of Delegated Legislation**

21. Clause 29A amends Section 113A of the Police Act 1997 (criminal record certificates), which specifies offences that cannot be filtered from disclosure certificates by AccessNI.
22. Clause 29(A)-(5) inserts a new subsection (7A) to allow the Department to amend Schedule 8ZA of the 1997 Act by order so as to add or remove an offence or a description of an offence or vary an entry relating to an offence or a description of an offence from the list offences that cannot be filtered.

### **Reason for Delegated Legislation**

23. The existing list of sexual and violent offences that cannot be filtered from disclosure certificates by AccessNI extends to over 1200 entries, which is difficult to navigate, understand and maintain.
24. The provisions of new clause 29A consolidate the contents of section 113A(6D) within a new Schedule 8ZA to the Police Act and provide the Department with a power to amend the Schedule.

## **Assembly Control**

25. An order made under this provision will be subject to the negative resolution procedure in the Assembly to allow the list of non-filterable offences to be more quickly and easily amended than is currently possible.
26. The Department is, however, keen to stress that any changes to the Schedule will only be sought after consultation and agreement between the Child Protection Unit of the Department of Health, the Protective Disclosure Unit of the Police Service of Northern Ireland and the Independent Reviewer of Criminal Records.
27. Together with representatives of AccessNI, the above collectively make up the Non-Filterable List Committee, whose role is to review new offences for consideration of inclusion on the list and review existing offences on the list for consideration of amendment or deletion.

## **Clause 5: Live links: Giving a direction under this Chapter**

### **Purpose of Delegated Legislation**

28. Clause 5(4)(b) gives the Department the power to make regulations to specify matters that a court or tribunal must have regard to before giving a live link direction for under clause 5(1). Clause 5(1) provides for three types of live link directions -a live link direction for the participation of a person (“P”), a limited transmission direction and a broadcast direction.

### **Reason for Delegated Legislation**

29. The Department wishes to maintain a level of flexibility in the hope that it will allow the law created by these provisions to remain relevant as technology or court practice and procedure evolves and this regulation making power was sought to allow specific matters to be prescribed by regulations which the judiciary could be required to consider and weigh in determining the interests of justice.

## **Assembly Control**

30. New clause 5(8) indicates that regulations may not be made under this clause 5(4)(b) unless a draft of the regulations has been laid before, and approved by, a resolution of the Assembly.
31. This level of scrutiny is considered appropriate due to the nature of the provision being brought forward, which the Department considers should be the subject of Assembly debate and agreement.

## **Clause 6: Live links: Presumption of giving evidence by live link in certain cases**

### **Purpose of Delegated Legislation**

32. Clause 6(3) and clause 6(4) gives the Department the power to make regulations to amend the list of persons specified in Schedule 1 as a “public authority”; and specify classes or descriptions of expert witnesses for the purposes of clause 6(1)(b).

### **Reason for Delegated Legislation**

33. The purpose of clause 6 is to create a presumption in favour of the use of live link where the participant is a specified ‘expert witness’ or where the sole participant is a public authority (or an officer or representative acting on behalf of a public authority) listed at Schedule 1. Enabling evidence from police, medical or other professional witnesses to be given remotely from different locations ensures that high quality evidence continues to be provided whilst freeing up considerable time for their essential duties -saving the costs, time and work associated with travelling and waiting at court without adversely impacting on access to justice.
34. The Department wishes to maintain a level of flexibility in the hope that it will allow the law created by these provisions to remain relevant as procedure evolves and additional witnesses are considered ‘expert’ for the purposes of giving evidence by live link.

35. Clause 6 applies to public authorities listed at Schedule 1 and to expert witnesses of a class or description specified by the Department. The regulation making power at clause 6(3) was sought to allow the list of public authorities at Schedule 1 to be updated (if required) more quickly and easily than would otherwise be possible by way of amendment in primary legislation. The regulation making power at clause 6(4) was sought to allow the Department to specify the classes or descriptions of 'expert witnesses' as above, and, if necessary, to amend or update more quickly and easily than would otherwise be possible by way of amendment by primary legislation.

### **Assembly Control**

36. Subsection (6) states that the Department may not make regulations under subsection (3) or (4) unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.
37. This level of scrutiny is considered appropriate due to the nature of the provision being brought forward, which the Department considers should be the subject of Assembly debate and agreement.