

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

www.justice-ni.gov.uk

Minister's Office
Castle Buildings Block B
Stormont Estate
Ballymiscaw
Belfast
BT4 3SG

Kathy O'Hanlon
Clerk to the Justice Committee
Northern Ireland Assembly
Parliament Buildings
Stormont
Belfast BT4 3XX

20 February 2025
Our ref: JCP\25\41

Dear Kathy,

JUSTICE BILL PART 2: CHILDREN AND SERIOUS THREAT TO PUBLIC ORDER

Thank you for your letter of 12 February in which you sought clarification on a specific provision in the Justice Bill relating to bail and remand for children.

First, you have asked the Department whether the range of clauses referring to an individual's release on bail potentially leading to a "serious threat to public order" relate to a perceived threat arising from the individuals themselves, or from the community. The answer is both – we are not being prescriptive about its application. We recognise that some children have the capacity to engage in serious public disorder, whether through their own decision-making or under direction by others. Equally, we recognise that some alleged offending incidents by children can elicit strong community reactions. Therefore, the new ground for refusing bail could apply equally to both.

You also asked about the potential human rights implications of the second scenario. We agree that there would certainly be human rights implications should any decision not to release an individual on bail be based solely on any perceived threat to public order from others. That is why this new ground for refusing bail must be applied in conjunction with the other conditions and considerations being introduced in the Bill. Most significant

among these are the two conditions that must be met before a child can be remanded into custody:

- The first condition is that it must be very likely that a child will receive a custodial sentence for their offending.
- The second condition is that, even if the first condition is met, a child must still be released on bail unless one or more of the following grounds for refusing bail exists:
 - to prevent a failure to surrender to custody;
 - to prevent another offence being committed;
 - to prevent interference with witnesses; or
 - to prevent their release causing a serious risk to public order.

Whilst the first three grounds for refusing bail already exist in legislation, the final point above is a new consideration. It is based on responses to a large-scale public consultation and report by the NI Law Commission on [Bail in Criminal Proceedings](#), which identified the four grounds above as being acceptable circumstances when a court can consider refusing bail, or imposing bail conditions. The European Court of Human Rights has recognised the preservation of public order as a fourth ground for refusing bail and we are therefore updating the legislation to reflect that.

Detention for this reason may be justified in exceptional cases, if the gravity of the alleged offence and the public response are such that the release of the individual is likely to lead to a public disturbance. It should only continue as long as public order is actually threatened. We believe that any offence committed by a child which causes such a community reaction is likely to be so serious that the court would have to consider whether the child should be remanded into custody.

We know that during officials' oral evidence at the Justice Committee shortly after introduction of the Bill, concerns were expressed that there is a danger this new provision might encourage communities to mobilise against a child to prevent their release on bail. We would like to reassure the Committee that in all cases, the court would have to fully consider the actual threat posed, and all other options available. This could include the

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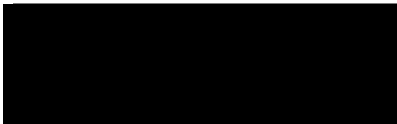
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child being released on bail on the condition that they live elsewhere, to prevent such a scenario occurring. Our legal system, and our compliance with international human rights, should not be dictated to by the threat of public disorder.

I hope that this reassures the Committee regarding the human rights compliance of these provisions and their intentions.

Yours sincerely



**DAVID GRAHAM
DALO**



**Northern Ireland Assembly
Committee for Justice**

David Graham
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

12 February 2025

Justice Bill Part 2: Children and Serious threat to public order

Dear David

At its meeting on 6 February 2025, the Committee for Justice received legal advice from the Assembly Legal Services on the Justice Bill.

Following this advice, the Committee agreed to seek clarity from the Department on the drafting of Clause 5, Article 3(d) and Clause 6, Article 10F, 3(d) and Article 10G, 2(d) that refer to the person or child's "*release causing a serious threat to public order*".

In particular, the Committee asked whether the serious threat to public order arises from what the person/child themselves may do if released on bail, or if relates to the potential action of others in the community because of the person/child being granted bail. If the latter, the Committee asked what the potential human rights implications could be of a decision not to release a person/child on bail due to the perceived threat to public order from others.

A response by 26 February would be appreciated.

Yours sincerely

Kathy O'Hanlon

**Kathy O'Hanlon
Clerk to the Committee for Justice**