

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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Kathy O'Hanlon
Clerk to the Committee for Justice
Room 242
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3 October 2025

Dear Kathy,

JUSTICE BILL

Thank you for your letter of 26 September 2025, in which you asked for some further information in relation to several of the planned Departmental amendments to the Justice Bill.

The information is provided below, under the headings set out in your correspondence.

Biometrics

The policy intentions of the retention of biometric data for recordable offences, including the proportionality of proposed retention periods for biometric material taken for a recordable offence that is more likely to be disposed of by way of a fine.

If an individual is arrested for a recordable offence (an offence that could result in a prison sentence) and is brought to a police custody suite, they will routinely have their DNA and fingerprints taken, as per the powers contained in Part 6 of the Police and Criminal Evidence (NI) Order 1989 (PACE NI).



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A recordable offence is deemed to be potentially serious enough to merit a custodial sentence and as such it is considered that the individual may pose a corresponding risk of further offending or to public safety. It is therefore considered appropriate to retain fingerprints and DNA for a period of time to ensure their value in law enforcement purposes.

The importance of retaining DNA and fingerprints

DNA and fingerprints are powerful tools in the prevention and detection of crime and the investigation of criminal offences. This is due to their unique nature with DNA profiles and fingerprints from known individuals retained on a database to enable comparisons to be made with material found at crime scenes. The retention of material on a database also provides a deterrent to individuals who are aware that their DNA profile and fingerprints are being retained.

DNA and fingerprints retention framework

The current law regarding retention is set out in Article 64 of PACE NI which states that the police may retain the DNA and fingerprints taken by police (after they have fulfilled the purposes for which they were taken) in connection with a recordable offence, irrespective of whether or not it results in a conviction.

However, the current retention regime in Northern Ireland is in breach of the Marper and Gaughran judgments of the European Court of Human Rights. Therefore, Part 1 of the Justice Bill, currently being considered by the Justice Committee, contains a proposed new DNA and fingerprints retention framework for Northern Ireland for DNA and fingerprints taken in connection with a recordable offence. The new framework sets out maximum retention periods based on the nature and seriousness of the offence, the age of the person concerned, criminal history and whether the person is convicted or not convicted.

The Department believes that the proposals strike an appropriate balance between privacy rights and also respect for victims, the investigation of crime and public protection.



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Retention of biometric material for a recordable offence that is more likely to be disposed of by way of a fine

The retention provisions for penalty notices in the Justice Bill (which would insert new Article 63Q into PACE NI) provides for a two-year retention period for penalty notices issued under Section 60 of the Justice Act (NI) 2011. If an individual is arrested for one of the penalty offences listed below and brought to a police custody suite, DNA and fingerprints may be taken from the individual:

- Indecent behaviour (Section 9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968)
- Shoplifting (Section 1 of the Theft Act (NI) 1969)
- Criminal Damage (Article 3(1) of the Criminal Damage (NI) Order 1977)
- Disorderly behaviour (Article 18(1)(a) of the Public Order (NI) Order 1987)
- Behaviour likely to cause a breach of the peace (Article 18(1)(b) of the Public Order (NI) Order 1987)
- Resisting / obstructing / impeding a Constable (Section 66(1) of the Police (NI) Act 1998)

A two-year retention provision for penalty notices under Section 60 of the Justice Act (NI) 2011 was included in Schedule 2 of the Criminal Justice Act (NI) 2013, which was approved by the Assembly but never commenced.

A two-year retention period is considered appropriate and proportionate for this level of offending and corresponds with the approach in England and Wales (which has been operating since 31 October 2013 without challenge). It is considered that new Article 63Q strikes an appropriate balance between the severity of the offence (i.e. a recordable offence) and the disposal (i.e. a penalty notice).

Rehabilitation of Offenders

Clarification of the treatment of legacy/troubles-related convictions and the calculation of rehabilitation periods, and whether the planned amendment proposes any changes in this regard.

The Rehabilitation of Offenders (Northern Ireland) Order 1978 does not distinguish between offence or conviction types – it is the solely the length of the sentence imposed that determines whether a conviction can become spent or not.

The amendments to the 1978 Order aim to reduce rehabilitation periods for existing convictions and to allow more convictions to become capable of becoming spent, without any reference to or consideration of the nature of the offence.

Live links

Clarification of whether the custody clock is stopped should a live link connection be lost.

There is no provision for the custody clock to be stopped if a connection is lost during the use of live links. The clock will run as normal while attempts are made to restore the connection or alternate arrangements are put in place.

When considering the use of live links for reviews or extensions of detentions or police interviews, the PSNI should be cognisant of any risk of connection issues, and this should be taken into consideration as part of planning and decision making when considering the use of live links. The use of live links is discretionary so when it is unavailable, the PSNI should revert to in person review/extension hearing and interviews should take place.

PACE NI permits the “pausing” of the PACE clock for both reviews and detentions if the detained person is released on bail.

Article 42(4) of PACE NI also permits the pausing of the PACE clock, where a person is taken to a hospital for medical treatment. The clock resumes for any time the person is questioned either travelling to or from the hospital and while in hospital.



Serious Organised Crime

An explanation of how the extraterritorial element of new Clause 19A is compatible with Section 6(2)(a) of the Northern Ireland Act 1998; and to what extent activities in other jurisdictions will be taken into account when prosecuting for offences committed in Northern Ireland

The definitions at Clause 19A operate for the purposes of Part 2A, to include the two new offences. 'Criminal activities' are defined as activities falling within Clause 19A(5) or (6). Clause 19A(6) has an extraterritorial element in so far as it recognises certain criminal activities carried on outside Northern Ireland.

In order to satisfy the meaning of criminal activities under clause 19A(6), the activities must be carried on outside Northern Ireland, they must constitute an offence in the country or territory they are carried on, and they would constitute an offence in Northern Ireland if they were carried on in Northern Ireland.

With regard to compatibility of Clause 19A with Section 6(2)(a) of the Northern Ireland Act 1998, it is not considered that this raises any competence issues as this does not form part of the law of a country or territory other than Northern Ireland and nor does it seek to reach into other jurisdictions.

It merely recognises criminal activities carried on outside Northern Ireland for the purposes of prosecuting an offender in Northern Ireland in connection with either of the two new offences. It is particularly beneficial as it recognises criminal activities carried on by organised crime groups who operate across the UK and beyond, and it means that evidence relating to their criminal activities may be admissible before a Court in Northern Ireland when determining the guilt of an offender under the two new offences in Northern Ireland.

It is not possible to provide a definitive answer as to what extent activities elsewhere will be considered relevant, this will have to be considered on a case-by-case basis and a decision taken after consideration of all pertinent facts in each case.

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The Minister of Justice trusts that the Committee finds this information helpful as part of their ongoing scrutiny of the Bill.



**DAVID GRAHAM
DALO**



**Northern Ireland Assembly
Committee for Justice**

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26 September 2025

Justice Bill

Dear David

At its meeting held on 18 September 2025, the Committee for Justice considered a paper from the Assembly Legal Services providing information in follow up to queries raised by Members during various briefings before the summer recess period.

The Committee agreed to seek further information on the following:

- Restorative Justice, Rehabilitation of Offenders and Biometrics – the policy intentions of the retention of biometric data for recordable offences, including the proportionality of proposed retention periods for biometric material taken for a recordable offence that is more likely to be disposed of by way of a fine;
- Rehabilitation of Offenders – clarification of the treatment of legacy/troubles-related convictions and the calculation of rehabilitation periods, and whether the planned amendment proposes any changes in this regard;
- Live links – clarification of whether the custody clock is stopped should a live link connection be lost; and

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- Serious Organised Crime – an explanation of how the extraterritorial element of new Clause 19A is compatible with Section 6(2)(a) of the Northern Ireland Act 1998; and to what extent activities in other jurisdictions will be taken into account when prosecuting for offences committed in Northern Ireland.

I should appreciate a response by 13 October 2025.

Yours sincerely

Kathy O'Hanlon

Kathy O'Hanlon
Clerk to the Committee for Justice