

FROM THE OFFICE OF THE JUSTICE MINISTER

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Dear Kathy,

Justice Bill: NIACRO oral evidence

Thank you for your letter of 14 May. I apologise for the delay in responding, which is due to some capacity constraints in the Department.

As requested by the Committee, please find below responses to the queries raised.

- **What consideration was given alignment with legislative changes in England and Wales in respect of when convictions become spent**

The Summary of Responses and Way Forward document that was published by the Department on 27 October 2021 indicates that a direct alignment with the legislation changes in England and Wales in respect of when convictions become spent was one of four options offered to the Minister for consideration, following the conclusion of the consultation exercise that ran from 8 January 2021 to 12 March 2021.

However, the Minister considered that Option 4 of those offered to her for consideration would enable more ex-offenders to put their convictions behind them than a scheme that

mirrored England and Wales directly, while being simpler to understand and more straightforward to operate.

- **Whether any consideration has been given to expanding filtering eligibility**

Following an amendment to the Police Act 1997, the AccessNI filtering scheme was introduced in 2014 with the aim of removing ‘old and minor’ convictions, cautions, etc from Standard and Enhanced disclosures. As set out in legislation, the following filtering rules apply:-

- Adult convictions should be filtered 11 years after the date of conviction,
- Cautions filtered after 6 years, and
- Informed warnings after 1 year.

The Scheme provides a graduated approach for younger people, with significantly shorter time frames applying to the disclosure of information relating to those aged under 18 at the time of the conviction, or the award of their disposal. For example, the period before which a conviction awarded when someone was under 18 can be considered for Filtering is 5½ years.

The Scheme is subject to two exclusions which require that offences must always be disclosed on Standard and Enhanced checks irrespective of the age of the disposal, namely:-

- If the conviction resulted in a custodial sentence; and
- If the offence is on the List of Specified Offences - this is a long list of serious, violent and sexual offences.

Since first introduced, the Filtering Scheme has been subject to a number of refinements, including:-

- a) The introduction of a Review Mechanism in 2016 which created the role of the Independent Reviewer (IR) of Criminal Record Information. This role provides for a means by which:-

- Disposals (at a time the individual was under 18) can be reviewed prior to inclusion on a disclosure certificate.
 - Individuals can request a review of their disclosure certificate if they consider that disclosure of the conviction information is disproportionate for the role they are seeking to undertake.
- b) Extending the role of the IR in March 2020 to consider the disclosure of all youth non-court disposals prior to their inclusion on the disclosure certificate (Clause 29 of Justice Bill seeks to put this arrangement on a statutory footing).
- c) The removal of the ‘multiple conviction rule’ in 2021, meaning that every disposal is considered for filtering in its own right, irrespective of the number of disposals on an individual’s criminal record (prior to this, the filtering rules only applied if an individual had a single offence on their criminal record).
- d) Reviewing the List of Specified Offences (Clause 29A), which extends to the creation of a new Committee with the remit of considering the offences on the List.

A wider review of the scheme to, for example, consider expanding filtering eligibility would be a significant piece of work, requiring:-

- A review of existing arrangements (in particular from a safeguarding / public protection perspective);
- Consideration of arrangements in other jurisdictions (for example, the scheme in England & Wales largely mirrors arrangements in NI);
- A public consultation on proposed changes; and
- If progressed, amendment to provisions in Primary legislation.

The Department considers that, whilst there may be merits in reviewing wider elements of the Scheme, it would not be possible to undertake this within the current mandate and with existing resource allocations. The Department considers that, as the List of Specified Offences has not been reviewed since the Filtering Scheme was introduced in 2014, it is appropriate and achievable to review this aspect of the scheme at this time.

- **The Department’s views on the appropriateness of the use of fines as an**

alternative court disposal for children aged under 16

The Department is aware of the implications which can arise in cases where a financial penalty is imposed on an individual. These can be exacerbated where the individual in question is a child, who often have no financial independence, particularly if they are under 16. This is why fines and other financial penalties are rarely imposed on children. Indeed, some such disposals, such as Penalty Notices, are very deliberately only available for adults aged 18 and over. NIACRO themselves point out in their written evidence that “We note that in NI children don’t usually receive fines”. This is a position we wish to maintain. Current legislation also restricts the level of any fine imposed on children and makes provision for any such fines to be paid by a child’s parent or guardian in most cases (see Articles 34-35 of the Criminal Justice (Children) (Northern Ireland) Order 1998).

The youth justice provisions in the Justice Bill do not introduce any new fines for children. Rather, they replicate what already exists in legislation, whereby a fine can be given as a penalty for a breach of a Youth Custody and Supervision Order under the same conditions and up to the same amount as currently exists under a Juvenile Justice Centre Order. The availability of the option of a fine as an alternative to a return to custody provides the judiciary with flexibility in how they deal with breaches. Given that very few children serve Juvenile Justice Centre Orders – generally single figures in any one year – and even fewer breach those orders, the option of fining a child for such a breach virtually never happens in practice. We do not expect this position to change under the new custodial order.

- **Clarification of how the proposed new Youth Custody & Supervision Order will align with Youth Justice practice, the Review of Sentencing and the proposed new Single Community Order for Children**

Youth justice practice in Northern Ireland is driven by our commitments in the Strategic Framework for Youth Justice. The children’s provisions in the Justice Bill form a significant part of the work to deliver on those commitments.

The Review of Sentencing was aimed mainly at changes to the adult criminal justice system, in acknowledgement of the fact that we have a separate youth justice system with its own sanctions. Indeed, a number of the proposals in the Sentencing Review consultation were drawn from the success of the youth system, in particular the focus on restorative justice.

The development of a new Single Community Order for Children, also a commitment in the Strategic Framework, is in the early stages and currently being consulted on. That work aligns with the Department's policy approach for custodial orders, which is to develop one main order for children (the Youth Custody and Supervision Order as introduced in the Justice Bill), to streamline and simplify the sentencing framework, reduce confusion and increase compliance.

- **Whether there will be flexibility regarding the transfer of persons in custody between the Youth Justice Centre and Hydebank when they reach 18 years old but have limited time left to serve on their sentence.**

This flexibility is already catered for within the Justice Bill. Schedule 4, paragraph 10b amends Schedule 2 of the Criminal Justice (Children)(NI) Order 1998 to allow the manager of the Juvenile Justice Centre to hold an individual serving a custodial order beyond their 18th birthday rather than transferring them automatically to Hydebank when they become an adult. The decision whether or not to transfer them will be made by expert Youth Justice Agency staff on a case-by-case basis. This decision will be based on a range of factors such as the best interests of the individual, their needs and vulnerabilities, their personal views, the length of sentence remaining, and whether they are engaged in a specific education or training programme at the Juvenile Justice Centre. The best interests of the other children in custody within the JJC at that time will also be a factor. No person will be held beyond the point where they are 18 years and six months.

- **Clarity on the inclusion of cautions and disposals in the biometric retention framework, given their diversionary nature; and whether the framework extends to informal warnings for minor offences**

Further information is provided below on the retention proposals for various diversionary disposals.

Community Resolution Notices

Community Resolution Notices (CRNs) can only be given to individuals by police officers with no involvement from the PPS. CRNs will therefore not attract any retention period which is consistent with the approach in England and Wales.

Diversionary Youth Conferences

Diversionary Youth Conferences are directed by the PPS and are also considered to be a step up from CRNs.

The five-year retention provision for Diversionary Youth Conferences was carried over from the DNA and fingerprints provisions contained in the Criminal Justice Act (NI) 2013, which was approved by the Northern Ireland Assembly but never commenced.

Community Based Restorative Justice Schemes

Community Based Restorative Justice Schemes (CBRJJs) are directed by the PPS and are considered to be a step up from CRNs. CBRJJs are considered to be on a similar level to a caution. The Department's view is that any stand alone CBRJJs should attract the same retention period as a caution i.e. five years for under 18s.

Where a CBRJJ is not a PPS disposal but forms part of a court disposal, the retention period will be determined by the most serious part of the court disposal.

An amendment is proposed for Consideration Stage to clarify that CBRJJs attract the same retention period as a caution for adults (25 years for a minor recordable offence or 75 years for a qualifying offence).

Cautions

Cautions will be treated in the same way as convictions (for both minor offences and qualifying offences) for the purposes of the new retention framework (for adults 25 or 75 years). This is because cautions involve an individual admitting the offence. It is considered that guilt should be treated the same way, whether by conviction or an admission by the individual.

It is important to note that shorter retention periods apply in relation to cautions given to under 18s (five years). Restorative cautions and informed warnings will be treated the same way as cautions (for both minor offences and qualifying offences).

Penalty Notices issued under Section 60 of the Justice Act (Northern Ireland) 2011 Article 63Q (Persons given a penalty notice) provides for a two-year retention period for penalty notices issued under Section 60 of the Justice Act (Northern Ireland) 2011, given for the following offences:

- Indecent behaviour (S9 of the Criminal Justice (Miscellaneous Provisions) Act (NI) 1968)
- Shoplifting (S1 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 (Northern Ireland) 2011 was included in Schedule 2 of the Criminal Justice Act (Northern Ireland) 2013 which was never commenced. A two-year retention period is considered to be appropriate and proportionate for this type of offending and corresponds with the approach in England and Wales.

- **In its written submission, NIACRO states**

“we note that there is no time to introduce a review mechanism in this mandate and strongly recommend that this is progressed as a priority in the next Assembly mandate to ensure that people who are sentenced to more than 10 years and have rehabilitated have an opportunity for their conviction to become spent.”

The Committee agreed to ask the Department if any consideration has been given to making provisions for such a review mechanism in this Assembly mandate.

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The Supreme Court judgment of 6 March 2025 makes clear that a review mechanism is not required in order for a rehabilitation regime to be considered lawful.

Although the Department considers that there is merit in continuing to develop policy proposals for a potential future review mechanism that would be subject to stakeholder engagement and public consultation, the development of these policy proposals will be subject to resource availability and other competing policy and legislation requirements for the remainder of the mandate.

The Department's priority is the progression and implementation of the reforms to reduce rehabilitation periods for disposals currently captured by the existing regime and to increase the range of sentences that can become spent, as facilitated by the planned amendments to the Justice Bill at new Clause 26A.

I trust this addresses all the queries raised by NIACRO and assists in the Committee's scrutiny of the Bill.

Officials will be happy to provide any further clarification required.



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

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14 May 2025

Justice Bill – NIACRO oral evidence

Dear David

At its meeting on 8 May 2025, the Committee for Justice took oral evidence from NIACRO on the Justice Bill.

Following the evidence session, the Committee agreed to ask the Department for the following information:

- What consideration was given alignment with legislative changes in England and Wales in respect of when convictions become spent;
- Whether any consideration has been given to expanding filtering eligibility;
- The Department's views on the appropriateness of the use of fines as an alternative court disposal for children aged under 16;
- Clarification of how the proposed new Youth Custody & Supervision Order will align with Youth Justice practice, the Review of Sentencing and the proposed new Single Community Order for Children;
- Clarity on the inclusion of cautions and disposals in the biometric retention framework, given their diversionary nature; and whether the framework extends to informal warnings for minor offences; and

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- Whether there will be flexibility regarding the transfer of persons in custody between the Youth Justice Centre and Hydebank when they reach 18 years old but have limited time left to serve on their sentence.

In its written submission, NIACRO states

“we note that there is no time to introduce a review mechanism in this mandate and strongly recommend that this is progressed as a priority in the next Assembly mandate to ensure that people who are sentenced to more than 10 years and have rehabilitated have an opportunity for their conviction to become spent.”

The Committee agreed to ask the Department if any consideration has been given to making provisions for such a review mechanism in this Assembly mandate.

I should appreciate a response by 30 May 2025.

Yours sincerely

Kathy O'Hanlon

Kathy O'Hanlon
Clerk to the Committee for Justice