

FROM THE OFFICE OF THE JUSTICE MINISTER

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

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

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Dear Kathy,

Justice Bill: RaISe Papers

Thank you for your letter of 13 May. I apologise for the delay in responding, which is due to some capacity constraints in the Department.

Please find below responses to the scrutiny points raised in the Assembly Research and Information Service's (RaISe) papers on the proposed Rehabilitation of Offenders and Restorative Justice amendments.

Rehabilitation of Offenders amendments

Has the Department reviewed the decision of the Supreme Court In the matter of an application for Judicial Review by JR123 (Appellant) (Northern Ireland) [2025] UKSC 8? Are there any further implications from the judgment for policy making around the rehabilitation of offenders?

The Department was pleased that the Supreme Court ruled in the Department's favour on 6 March 2025 and unanimously dismissed the appeal. The Court held that the Rehabilitation of Offenders (Northern Ireland) Order 1978 ("the 1978 Order") strikes a

fair balance between the rights of the appellant, the rights and freedoms of others and the interest of the general community, and that the rehabilitation regime under the 1978 Order falls within the wide margin of appreciation that is given to the legislator in this context and does not breach the appellant's article 8 rights.

While this means that that the provisions of the 1978 Order are deemed lawful in the absence of any review mechanism for those offences not capable of becoming spent, the Department considers that there is merit in continuing to develop policy proposals for a potential future review mechanism, subject to resource availability and other competing policy and legislation priorities.

Has the Department engaged with voluntary and community sector stakeholders on these changes since the 2021 consultation? How will changes under this legislation be communicated to stakeholders and the wider general public? Will guidance explaining the amended rehabilitation periods be developed by the Department?

Department officials attended and took part in a stakeholder event with NIACRO, Unlock and others in February 2021 as part of the consultation process and have kept stakeholders updated on policy and legislation developments since the conclusion of the consultation exercise by email at official level and formal written correspondence at senior official and Ministerial level.

A planned social media campaign will seek to raise awareness of the change of legislation prior to the changes coming into operation, directing members of the public to the DOJ and NI Direct websites where the changes to rehabilitation periods will be set out in detail. *The Department has stated that reducing reoffending through the rehabilitation of offenders aims to ensure that there are fewer victims of crime and less money is spent on repeat offenders circulating within the justice system. How will these reforms assist with this? And how will this be quantified and evaluated?*

These reforms will assist with measures to tackle reoffending by helping former offenders gain employment and to live within the law. A former offender who finds employment is less likely to re-offend, thus benefiting themselves, their family and the wider community. These reforms will allow more former offenders to have their convictions become spent, facilitating increasing numbers of ex-offenders in applying for work and further promoting their reintegration into society and away from crime.

A post-implementation evaluation of the legislative reforms will be carried out, which will compare statistics for conviction and re-conviction rates, both prior to and after implementation of the new legislation.

The Department's rationale for a fixed upper limit of 10 years appears to be related to Schedule 1 of the Criminal Justice (Northern Ireland) Order 2008 which lists a number of violent and sexual offences which can attract significant sentences of over 10 years (120 offences) – why was the 10-year limit not subject to inclusion in the 2021 public consultation? (Has the Department since engaged with stakeholders on this proposal? Can detail be provided around the “specific conviction and re-offending statistics” that underpinned the 10-year limit? Was any consideration given to not having an upper limit and instead excluding certain serious offences from rehabilitation? Did the Department consider the alternative approach adopted in England and Wales of allowing sentences of over 4 years to become spent except those that are specified as serious sexual, violent and terrorism offences (currently over 170 offences)? Can the Department also provide a rationale for each of the other sentencing bands selected to determine the rehabilitation periods?

The 10-year option was not offered as a model for illustration purposes in the consultation document because it was only developed following the consideration of responses to the consultation and analysis of conviction and re-offending statistics for Northern Ireland while modelling the adoption of the England and Wales approach of allowing sentences of over 4 years to become spent, except those that are specified as serious sexual, violent and terrorism offences.

This proposal originated from engagement with stakeholders during the consultation. The Department has since provided written and oral briefings to the Justice Committee on this proposal along with regular updates and has engaged directly with NIACRO and NIHRC regularly at an official and Ministerial level.

In considering the merits of options it was important to draw upon statistical data for convictions in Northern Ireland, to facilitate an informed decision on how many ex-offenders here would benefit from each of the options. The key factor here was that when examining the data for Option 3 where a direct equivalent of the changes being brought forward in England and Wales would be introduced in Northern Ireland would mean excluding specific offences (which in NI extends to 120 individual offences as specified in Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008). These offences would be excluded from the regime regardless as to whether a standard custodial sentence or a public protection sentence was imposed which would prevent a significant number of offences from being capable of becoming spent in Northern Ireland.

Therefore, the Minister decided to use the length of sentence as a measure of seriousness and to set an upper limit for those offences that can become spent, (of 10 years to coincide with the definition of serious offences in the Criminal Justice (NI) Order 2008) rather than using offence categories as in England and Wales.

The Summary of Responses to the Consultation and Way Forward document that was published by the Department on 27 October makes clear the Minister considered replicating the England and Wales approach as Option 3 of the four that were offered to her for consideration.

The Minister, however, chose Option 4 as the option that would enable more ex-offenders to put their convictions behind them while also ensuring that the reforms remained simple to understand and straightforward to operate (a core tenet of the original rehabilitation scheme).

The rationale for each of the other sentencing bands selected to determine the rehabilitation periods is to benefit from reducing the number of custody tiers or bands to three clearly defined parameters with a simple and easy to understand limit. There are also three, equally clear rehabilitation periods. This ensures the scheme is more easily understood which was an area for improvement identified in consultation responses.

Can the Department provide a timeframe for the development of the regulations containing the review mechanism under clause 28B? Will there be consultation on these with relevant stakeholders? And if so, when is this projected to take place? Has the Department considered the resource implications of the review mechanism? How many applications are anticipated? Article 7A(5) provides for a range of factors which the regulations may include - further to this list, will there be any provision for reasons to be given for a particular determination by a specified court or tribunal?

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.

As indicated above, 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. These policy proposals will consider resource implications, the number of anticipated applications and the appropriateness of providing reasons for a particular determination by a specified court or tribunal.

However, the development of these policy proposals will be subject to resource availability and other competing policy and legislation requirements – the Department considers the priority to be 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 are capable of becoming spent, as facilitated by the planned amendments to the Bill at new Clause 26A.

As such the Department is not in a position to provide a timeframe.

Restorative Justice Amendments

With regard to adult restorative justice, the Research and Information Service's paper raised a number of issues, as below.

Timeline: It is hoped that the new practice standards and accreditation framework, and therefore the new accreditation process, will be ready for launch sometime in the autumn of this year. A final version of the framework will be shared with the Committee for information ahead of the launch, and members will be invited to the launch event.

Increase in the number of accredited organisations: Once the new process is live, it is anticipated that a small number of organisations and individuals interested in delivering restorative justice interventions will come forward for accreditation. The exact number of those seeking accreditation is unknown at this time; it is not expected to be an unmanageable amount, but the Department is keen to expand on the current availability of services to ensure they can be offered across Northern Ireland. A register of accredited organisations and individuals will be published on the DoJ website.

Funding associated with the expansion of restorative justice: While funding options are somewhat limited due to budget constraints, some additional money will be made available to help with the expansion of restorative justice in Northern Ireland and this amount will be kept under review. The funding model that will be used once the new accreditation process is live is currently being considered by the Department and the Restorative Justice Working Group.

Cost of accreditation: While there is generally no cost directly associated with applying for accreditation, there may be some costs involved when undertaking Access NI checks (an enhanced check costs £32.00) and the training necessary to become accredited.

Interim Protocol Lead: The Committee asked several questions about the role of the Interim Protocol Lead (IPL) and their functions. The role of the IPL is, in short, to implement the revised 2023 Restorative Justice Protocol and expand both the number of

accredited service providers and the use of restorative justice throughout the criminal justice system. A significant part of this will be assessing the suitability of those who are applying for accreditation and making recommendations to the Minister.

Other key areas of work involve the development of the new restorative justice training and standards framework; the promotion of restorative justice and its benefits; the handling of complaints; and reviewing the Fresh Start recommendation of a Centre of Restorative Excellence (CORE) and seeing how this might be taken forward (in conjunction with the Executive Office). As with all posts, the key functions of the IPL role will be kept under review and adjusted as necessary to take account of progression of the accreditation process. The IPL role is set at a Principal Officer level in the civil service, the full-time salary for which in the civil service currently has a range of £56,863 to £60,820.

The IPL consulted with the Restorative Justice Council UK, the Ministry of Justice New Zealand and the Federal Public Service Justice Belgium in relation to the development of adult restorative justice accreditation. She also worked closely with the DOJ Restorative Justice Working Group, during the development of the Practice Standards and Accreditation Framework to ensure the end product was appropriate and achievable, particularly for smaller organisations and individuals locally. The IPL also sourced a number of training courses that were offered by the Department to statutory partners, with very positive feedback. These courses ranged from introductory training for those new to restorative justice to a course on dealing with serious and complex cases for those with restorative justice experience. In addition, the IPL and the Department have been developing a range of promotional material such as a professionally designed version of the framework, restorative justice leaflets and a video that will be uploaded to the DoJ website following the framework launch.

CJINI: The revised role of CJINI, i.e. the removal of a pre-accreditation inspection in favour of routine post-accreditation inspections, was also highlighted by the Committee. The Department and CJINI view this as a positive change, and one which was suggested

by CJINI themselves, who felt it more appropriate for them to review and assess the work of organisations once they had completed work that can be inspected. To ensure those becoming accredited are suitable, there is robust accreditation criteria in addition to mandatory Access NI checks and training, as well as consideration of applications by the IPL and Minister.

The frequency of reporting from CJINI to the Department on accredited organisations and/or individuals is a matter for CJINI to decide as part of its future inspection programme.

Restorative justice legislative provision: The Committee also asked about recommendations within recent reviews for statutory provisions for delivering adult restorative justice. The provisions in the current Justice Bill, alongside the new Protocol, will provide a statutory basis for the accreditation of restorative justice service providers. The need for, or any extension of, statutory powers in order to expand the use of restorative justice in the adult justice system is something that will be considered as part of future action plans under the Adult Restorative Justice Strategy.

In this context, and in terms of any review of the 2023 Restorative Justice Protocol, the current focus is on the development of an initial pilot that focuses on out of court diversionary disposals, which can be taken forward on an administrative basis with no need for a legislative underpinning. The focus will instead be on ensuring the framework is updated as required as this provides for the outworking of the Protocol. Responsibility for reviewing and updating the framework is with the IPL.

Miscellaneous points: A number of other miscellaneous points were raised in the Committee correspondence that have been addressed below:

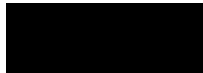
- The practice standards and accreditation framework will include best practice guidance for accredited service providers and failure to adhere to the standards laid out in the framework could result in an organisation/individual losing their accreditation.

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- There are no formal processes in place to monitor the work of non-accredited organisations or individuals. While the Department is interested in the work of all those involved in restorative justice and would prefer that all of those working within this sphere follow the guidance and practice standards laid out in the framework, it is acknowledged that these are only a requirement for accredited organisations and practitioners.
- Information around the use of restorative interventions, including numbers of referrals and restorative interventions completed will be reported to the IPL on an annual basis. In addition, the Department publishes an Annual Progress Report on delivery against the Adult Restorative Justice Strategy which will include relevant information on the expansion of restorative justice across the justice continuum.

I trust this addresses all the queries raised in the RalSe papers and assists in the Committee's scrutiny of the amendments.

Officials will be happy to provide any further clarification required.



**DAVID GRAHAM
DALO**



**Northern Ireland Assembly
Committee for Justice**

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

13 May 2025

Justice Bill – RaISe papers

Dear David

At its meeting on 8 May 2025, the Committee for Justice considered the Assembly Research and Information Service's papers on the proposed Rehabilitation of Offender and Restorative Justice Amendments. The Committee agreed to forward the papers to the Department for response to the scrutiny points included.

With regard to the Restorative Justice Protocol, the Committee particularly requested details of the remit of the Interim Protocol Lead and a timeframe for the production of the new practice standards and accreditation framework.

I should appreciate a response by 27 May 2025.

Yours sincerely

Kathy O'Hanlon

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

Enc.