

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

www.justice-ni.gov.uk

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Kathy O'Hanlon
Clerk to the Justice Committee
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30 January 2025
Our ref: JCP\25\16

Dear Kathy,

JUSTICE BILL AMENDMENTS: REQUEST FOR ADDITIONAL INFORMATION

Thank you for your letter of 22 January 2025 in relation to the Justice Bill. Please find below the additional information as requested.

Human Rights compliance

You asked, firstly, for information on the human rights aspects that have been considered in relation to the proposed amendments to the Justice Bill.

As was the case with the provisions of the Bill at Introduction, the Department has carefully considered the ECHR implications of the planned additions to the Bill throughout the policy development and drafting process for the proposed amendments.

Now that the provisions have been drafted, detailed advice on the competence of the clauses, as well as compliance with human rights and Windsor Framework requirements, has been formally commissioned from Departmental legal advisors.

Once that process is complete, we intend to provide the Committee with another high-level overview of the Convention rights we consider have been potentially engaged by the amendments to the Bill and a short summary of how we have arrived at our assessment of the compatibility of the relevant provisions.

Accreditation procedure for Restorative Justice service

You then asked for details of the current system for the accreditation and reaccreditation of restorative justice organisations and individuals, the de-accreditation process and the appeal process; and details of processes and requirements to be introduced by the restorative justice amendment, including measures to ensure consistency across all practitioners.

This information is provided by way of **Appendix A** to this letter.

Proceeds of Crime Act 2002

You also asked for clarification of how the Proceeds of Crime Act 2002 (POCA) deals with legacy issues and historical proceeds of crime.

The Proceeds of Crime Act 2002 (POCA) sets out the legislative scheme for the recovery of criminal assets with criminal confiscation being the most commonly used power. The purpose of confiscation proceedings is to recover the financial benefit that the offender has obtained from their criminal conduct. The aim of the asset recovery schemes in POCA is to deny criminals the use of their assets, recover the proceeds of crime and disrupt and deter criminality.

In terms of dealing with legacy issues and historical proceeds of crime, confiscation occurs after a conviction has taken place and may cover the period of six years before proceedings were brought. In certain circumstances the court is empowered to assume that the defendant's assets, and their income and expenditure during that period of six years before proceedings were brought, have been derived from criminal conduct and to calculate the confiscation order accordingly.

Furthermore, the legislation also contains provisions which enable a confiscation order to be made:

- where none was made in the original proceedings,
- where a hearing was held, the court decided that the defendant had a criminal lifestyle but had not benefited from his general criminal conduct or that he did not have a criminal lifestyle and had not benefited from his particular criminal conduct and
- where a confiscation order has already been made. It may be used to increase the amount payable under a confiscation order on one or more occasions.

Again, it should be noted that the above measures will only apply within six years of the original conviction.

There are also additional means of recovering the proceeds of crime within the Act which do not require a conviction, namely civil recovery, cash seizure and taxation powers.

POCA was commenced on 24 March 2003 and applies to offences committed on or after that date. Where there is a mixed set of charges or counts that overlap that date, the pre-POCA regime applies.

Equal protection of all children and young people

Finally, noting that some of the offences listed in the AccessNI filtering amendment referred only to girls, you asked for clarification on whether there are plans to consider if all children and young people are equally protected from abuse, exploitation and other harms.

The list of offences that can never be filtered from criminal record certificates was compiled after extensive research by Departmental officials and legal advisors when the filtering scheme was first introduced.

The list includes a considerable number of past offences that are no longer available to the courts, but they are specified in the schedule to ensure that anyone with an historical conviction for these old – but serious – offences, cannot have that offence filtered from an AccessNI disclosure certificate.

These outdated offences have been replaced with more modern equivalents that are drafted in a gender-neutral fashion, to ensure that all children and young people – regardless of their sex – are equally protected from abuse, exploitation and other harms. For example, the Chair identified an offence of causing, encouraging or favouring seduction or prostitution of girl under sixteen under section 13 of the Children and Young Persons (Scotland) Act 1937 and causing or encouraging seduction or prostitution of a girl under seventeen under section 12(1) of the Children and Young Persons Act (Northern Ireland) 1950 as having no equivalent offence for a boy.

These offences – and numerous others included in the schedule – have been repealed and replaced a number of times in subsequent years and the current legislation in this respect is the Sexual Offences (Northern Ireland) Order 2008, which includes – by way of one example - an offence at Article 37 of paying for sexual services of a child.

All of the offences in the 2008 Order that are captured for filtering purposes are referenced at paragraph 108 (pages 17 - 19) of the AccessNI amendment and, given the breadth of the offences that are captured in the amendment (including, but not limited to, those listed under separate categories of offending such as Offences against the person (page 12) and Slavery and Trafficking (page 20)), the Department is not only satisfied that existing legislation that is designed to protect children and young people from abuse, exploitation and other harms applies equally to all, but also that the AccessNI amendment accurately captures all of these offences for filtering purposes.

The Minister of Justice trusts that the Committee finds this additional information useful as it reviews and takes evidence on the Bill.

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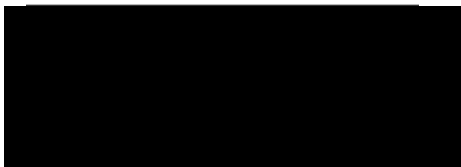


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**DAVID GRAHAM
DALO**

Enc. Appendix A – Restorative Justice Processes

RESTORATIVE JUSTICE PROCESSES

Background

The 2007 Restorative Justice Protocol established a framework for the use of restorative approaches in the criminal justice system, setting out the process of how referrals are made to these organisations, as well as the accreditation of organisations to undertake this work. This framework was based on each scheme's compliance with the rule of law and full cooperation with the police and other statutory agencies, including requirement that organisations should:

- receive accreditation from the Department on a range of issues including staff training, human rights protection and complaints procedures;
- receive referrals from statutory criminal justice agencies; and
- be subject to regular inspection by CJINI.

A review of the 2007 Protocol and its operation was carried out in 2022 by an expert panel, with the aim of future proofing the work, increasing appropriate referrals from statutory bodies and expanding the work of restorative practice generally, in line with the aims of the Adult Restorative Justice Strategy. A revised Protocol, the [Restorative Justice Protocol 2023](#), was published in July 2023. A key recommendation from the Panel's review was the appointment of a full-time independent Interim Protocol Lead (IPL). An independent expert practitioner was appointed in February 2024 and is responsible for progressing the new arrangements set out in the revised Protocol, including setting training standards and designing a new detailed Practice Standards and Accreditation Framework of around 60 pages. This will be shared with the Committee in due course.

Current accreditation process

As it stands, accreditation of community based restorative justice schemes under the 2007 Protocol is a two-part process. First, CJINI inspects the organisation to assess operational delivery and governance. Following this, a Suitability Panel assesses whether all those working in the scheme, either in a voluntary or paid capacity, are deemed suitable to practice.

This Suitability Panel, when last convened, was made up of a senior representative from the Youth Justice Agency and the Probation Board for Northern Ireland, with an independent chair. All individuals under consideration must obtain an enhanced AccessNI criminal records check. While criminal convictions are not a barrier to approval they cannot be recent. Recommendations were then made to the Minister, who made the final decision on accreditation of the scheme and individuals.

A [register](#) of accredited schemes is available online. The accreditation process is location-specific: each time an organisation wishes to open a scheme in a new location, the accreditation process must be followed for all staff and volunteers who will be based there. The fact that the parent organisation has been accredited does not give blanket cover for new locations.

Key aspects of the 2007 Protocol, and areas that are to be strengthened under the new process, are set out below.

- Accredited bodies to operate in accordance with the Human Rights Act 1998.
- Schemes must comply with the provisions of Section 5 of the Criminal Law Act (Northern Ireland) 1967 in respect of crimes deemed to be arrestable offences.
- Schemes undergo an initial inspection before commencement of operation under this Protocol.
- Focused on the accreditation of ‘organisations’ and did not consider the possibility of individual experts or advisors with considerable restorative practice experience, becoming accredited.
- No specification made to the organisation as to the training or practice requirements they should have before applying for accreditation.
- A victim centric approach is not specified.
- No recognition of vulnerabilities in relation to minority communities, no reference to the importance of fully informed consent from those harmed and that have caused harm.
- Accreditation monitored and reviewed.
- Schemes to comply with human rights requirements and promote confidence in the criminal justice system.
- Staff to receive training.
- No formal requirements for annually submitted reports.
- Removal of accredited status only possible on the basis of a report from CJINI.
- No varying levels of accreditation, according to experience and complexity of case – organisations are either accredited or unaccredited.
- One-off Enhanced AccessNI check.

New accreditation process

The new 2023 Protocol, together with the new Practice Standards and Accreditation Framework, will govern the use of restorative interventions in the criminal justice system in Northern Ireland and detail how the new accreditation process will work for both organisations and individual practitioners. In addition to meeting specific training standards, those seeking accreditation must work to fundamental standards of upholding the rule of law; adhere to human rights standards; and work with all criminal justice agencies, including PSNI.



Structure of the new Practice Standards and Accreditation Framework document

The Practice Standards and Accreditation Framework (around 60 pages) has the following key sections:

- *Introduction – The Evolution of Restorative Justice in Northern Ireland*
- *What is Restorative Justice – An Overview*
- *Adult Restorative Justice Strategy and Protocol*
- *Practice Standards and Accreditation Framework*

Part One – Practice Standards

- *Restorative Justice Core Values*
- *Restorative Justice Interventions*
- *Restorative Justice Skills, Knowledge and Behaviours*
- *Facilitating a Restorative Justice Process*
- *Glossary of Terms / Key Definitions*

Part Two – Accreditation Framework

- *Professional Supervision*
- *Accreditation Process, Monitoring and Professional Development*
- *Accreditation Framework*
 - (1) *Restorative justice practitioner (level one)*
 - (2) *Intermediate restorative justice practitioner (level two)*
 - (3) *Advanced restorative justice practitioner (level three)*
- *Organisational accreditation*
- *Independent restorative justice practitioners*

The detail of the Practice Standards and Accreditation Framework will be shared with Committee Members in due course.

Key aspects of the new process are:

- Applies not only to organisations, but also to individuals and independent practitioners.
- Requirement to work to international human rights standards.
- For accreditation, there must be a proven track record of working with the criminal justice system, within the rule of law and to continue to uphold the rule of law.
- Appointment of an independent IPL.
- Criminal justice agency evidence-based concerns about an organisation can be raised with the IPL.
- IPL sets standards and monitors practice as well as promoting awareness of restorative justice.
- IPL oversees implementation of the Protocol, Practice Standards and Accreditation Framework, including the work of accredited organisations and practitioners.
- Victim-centred approach promoted, working within the principles and framework set



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out in the Victim Charter.

- Clear provision as to the requirements for accreditation, including what evidence is needed and the timeframes for this.
- Clear required training standards for accredited organisations and practitioners.
- IPL makes a recommendation to the Justice Minister on accreditation.
- All accredited organisations, their staff members and independent restorative practitioners will be required to reapply for accreditation every three years.
- Enhanced Access NI check undertaken and repeated every three years.
- Accredited organisations and practitioners to ensure appropriate training, supervision and mentoring.
- Three accreditation levels plus evidence of skills, experience and training:
 - **Level one:** Accredited to undertake restorative approaches for incidents falling beneath the criminal justice threshold, with the potential to escalate to the attention of the police.
 - **Level two:** Accredited to undertake restorative justice work relating to formal criminal justice cases.
 - **Level three:** Accredited to complete specialist restorative justice processes relating to particularly sensitive, complex and serious crimes.
- Appropriate levels of experience, skills and training for each level.
- IPL will monitor and review training and practice standards.
- Quarterly progress reports to the IPL dealing with number of referrals; number of restorative interventions completed satisfactorily or terminated (including reasons for this); number of Agreements completed, or returned to Court or PPS for non-compliance; challenges impeding the delivery of restorative justice; and any complaints received.
- Accredited organisations and practitioners subject to inspection and review of their working practices by CJINI.
- If an accredited organisation or practitioner fails to maintain the required standards, or address concerns raised by the IPL, accreditation may be removed.
- Provision made in relation to monitoring, de-accreditation, complaints and appeals.

Key differences between the two accreditation processes

- A more robust process being brought forward in terms of the level of skills, experience and training that must be undertaken to secure accreditation.
- Clear and robust application process that must be well evidenced in terms of skills, experience and training to secure accreditation.
- Each accreditation level has clear, distinct criteria and evidence requirements.
- Tiered accreditation system, commensurate with competency and experience.
- Applicants will have to submit a case study, with evidence of restorative justice interventions undertaken.
- Regular progress reports to be provided to the IPL.
- Taken together this will ensure consistency of practice across Northern Ireland.

Legislative provision

The new proposed legislative provisions which govern the ability to add or remove schemes from a statutory register of organisations:

- expand accreditation beyond Community Based Restorative Justice organisations to include other non-statutory organisations and independent restorative practitioners;
- ensure CJINI are no longer the sole body with the power to submit a report to the Department, which may result in the removal from the register of accredited organisations and individuals;
- ensure CJINI continues to be able to inspect a registered organisation or individual as part of their statutory functions within the criminal justice system. This ensures that CJINI can assess the work of organisations as they operate, in practice, within the criminal justice system;
- allows the Department to determine the necessary requirements for accreditation purposes;
- ensures that accreditation is time bound, unless a re-application for accreditation is received and successfully processed; and
- provides for appeals against accreditation decisions by the Department.

Concerns about individuals' other activities

Concerns have been raised about the background of some of those that may be involved in restorative justice. Measures will be in place to perform background checks on all restorative justice organisations and practitioners wanting to be accredited. There will be a requirement for an enhanced Access NI check for all those wishing to be accredited and work within the criminal justice system. This is comparable to the checks done in other organisations who work with potentially vulnerable people. There will also be a requirement to comply with the rule of law.

Evaluation and Monitoring

Accredited organisations and practitioners will be required to submit regular progress reports, which will be reviewed and monitored by the IPL. CJINI will be able to inspect any of the accredited organisations and will be able to submit a report that may result in the removal of accreditation. Accredited organisations and practitioners will have to re-apply for accreditation after three years, ensuring that standards are maintained.

There will be clear requirements that applications for accreditation evidence:

- registration with the Northern Ireland Charity Commission, for organisations;
- enhanced Access NI checks, renewed every three years;
- appropriate levels of training and experience;
- implementation of reporting and recording procedures;
- systems in place to ensure financial accountability for, and management of, restorative justice services.



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- experience working with PSNI and criminal justice agencies; and
- mechanisms for dealing with complaints.

Appeals, complaints and de-accreditation

Both the 2023 Protocol, and the new Practice Standards and Accreditation Framework, contain provision relating to appeals, complaints and de-accreditation.

Complaints: Accredited organisations and practitioners will be required to have mechanisms for dealing with operational complaints against them. There will also be a role for the IPL where it is not possible for complaints to be resolved internally. The findings of the IPL on complaints will be reported to the Minister.

Appeals: Where an application for accreditation is not approved there will be a right of appeal. Decisions will be taken the Justice Minister, who will be advised by the IPL. The Minister will outline reasons for the decision. An applicant will not be precluded from reapplying for accreditation if they can demonstrate that they have addressed the issues set out in the Minister's decision.

De-accreditation: If any accredited restorative justice organisation or practitioner fails to maintain the standards required of them in relation to professionalism, quality of practice, adherence to the rule of law, or has failed to address concerns raised by the IPL, the Justice Minister may remove their accreditation. There will be a right of appeal against any such decision. Where accreditation has been removed an organisation or practitioner can reapply for accreditation no sooner than one year after the decision to remove their accreditation.



**Northern Ireland Assembly
Committee for Justice**

David Graham
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22 January 2025

Proposed Amendments to the Justice Bill: follow-up information

Dear David

At its meeting on 16 January 2025, the Committee for Justice heard evidence from departmental officials on the Department's proposed amendments to the Justice Bill, which relate to biometrics, restorative justice, AccessNI filtering and serious organised crime.

During the evidence session, the officials agreed to provide the following:

- information on the human rights aspects that have been considered in relation to the proposed amendments to the Justice Bill;
- details of the current system for the accreditation and reaccreditation of restorative justice organisations and individuals, the de-accreditation process and the appeal process; and details of processes and requirements to be introduced by the restorative justice amendment, including measures to ensure consistency across all practitioners;
- clarification of how the Proceeds of Crime Act 2002 (POCA) deals with legacy issues and historical proceeds of crime; and

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- clarification of whether there are plans to consider if all children and young people are equally protected from abuse, exploitation and other harms, given that a number of offences listed in respect of AccessNI filtering refer only to girls.

I would appreciate a response by 5 February 2025.

Yours sincerely

Kathy O'Hanlon

Kathy O'Hanlon
Clerk to the Committee for Justice