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FROM: DAVID GRAHAM
DATE: 13 SEPTEMBER 2024
TO: CAROLINE PERRY

SUMMARY

Business Area: Access to Justice
Issue: Briefing on the principles and content of the Justice Bill
Restrictions: Official – Policy in development.
Action Required: To note the written briefing ahead of the oral briefing on Thursday 26 September 2024
Attendees: To be confirmed

BACKGROUND

1. Members will be aware that the Minister intends to introduce the Justice Bill to the Assembly. Executive Agreement to the introduction of the Bill was granted at the Executive meeting on 18 July 2024 and, subject to the Speaker's agreement, it is anticipated that first stage will take place during Tuesday 17 September 2024 with Second Stage provisionally scheduled for week commencing Monday 30 September 2024.
2. The Bill gives effect to the Minister's desire to improve the operation and effectiveness of the justice system. At its core are four key aims, which are:
 - a) to amend retention periods for DNA and biometric material;
 - b) to make changes to custody arrangements for children and young people;

- c) to improve services for victims and witnesses; and
 - d) to improve the efficiency and effectiveness of aspects of the justice system.
3. This oral briefing session provides an opportunity for the Bill team to give an outline of the key content of the Bill and for the Committee to ask questions or seek clarification on any matters contained within the draft legislation.

KEY ISSUES

4. In summary, the Bill contains provisions under the following Parts and Headings:
- (i) **Part 1** - Provisions relating to Biometric Data: Retention etc, which include:
 - replacing indefinite retention with maximum retention periods for biometric data in Northern Ireland, based on age, severity of offence, and disposal/sentence;
 - the introduction of a requirement for a review of long term retained material;
 - the introduction of a provision for convictions outside the United Kingdom to be treated in the same way as Northern Ireland convictions; and
 - the introduction of a provision to extend the role of the Northern Ireland Commissioner for the Retention of Biometric Material.
 - (ii) **Part 2** - Provisions relating to bail, remand and custody for children, to:
 - strengthen the existing presumption of bail for children, introducing unconditional bail as standard and a requirement that any conditions applied should be proportionate and necessary;
 - introduce specific conditions which must be met before a child can be remanded into custody; and
 - underpin the current administrative arrangements which exist around the separation of children and adults in custodial settings.
 - (iii) **Part 3** - Use of Live Links in police custody:
 - Procedural adjustments to PACE detention review provisions by live video link.
 - (iv) **Part 4** - Administration of Justice:

Functions relating to the police

- Provision to provide the Northern Ireland Policing Board with an express power of delegation; and
- Removing the duty on the Comptroller & Auditor General to assess the NI Policing Board's performance plans and arrangements to secure continuous improvement.

Criminal proceedings

- Amendment to the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983 to correct a drafting error and transfer the function of consenting to conspiracies to commit offences outside NI from the Director of Public Prosecutions to the Advocate General for Northern Ireland;
- Provisions to close a gap in the law by amending section 7 of the Domestic Violence, Crime and Victims Act 2004 to prevent a charge of murder or manslaughter being "no billed" where a defendant is charged, within the same proceedings, with the section 5 offence (the offence of causing or allowing a child or vulnerable adult to die); and
- Adjustments to close a gap in intermediary appeal arrangements that would give legal cover for Registered Intermediaries to be provided for where there is an appeal from magistrates' or Crown Court (to county court or Court of Appeal).

Legal Aid

- A technical amendment to Schedule 11 to the Land Registration Act (NI) 1970 to add charges created by the Access to Justice (NI) Order 2003 and the Civil Legal Services (Statutory Charges) Regulations (NI) 2015 to the Schedule under which statutory charges can be registered; and
- Provisions to amend the Judicature (Northern Ireland) Act 1978 to impose a restriction on the circumstances in which an order for taxation of legal aid costs may be made. This is to facilitate the envisaged future introduction of alternative methods of determining the remuneration payable in relevant legal aid cases.

Criminal Records Certificates:

- Provisions to amend Schedule 8A of Part V of the Police Act to comply with a 2019 Supreme Court judgment on disclosure of non-court disposals for under 18s.

Court Security

- Changes to court security powers under the Justice Act (Northern Ireland) 2004 to extend the powers of Court Security Officers to cover all buildings in which Tribunals sit.
5. The provisions above are described in greater detail in the attached Explanatory and Financial Memorandum (EFM) and members may find the overview description of the provisions of the Bill at paragraphs 50 to 71 particularly helpful. A copy of the final draft Bill is also attached.
6. You will be aware of a number of planned additions to the Bill where drafting was not able to be completed before Introduction. These cover:
- (i) Provisions to transfer the powers and functions contained in section 43 of the Justice and Security (Northern Ireland) Act 2007 from the Secretary of State for Northern Ireland to DOJ to manage the accreditation process for organisations wishing to deliver Restorative Justice;
 - (ii) Provisions to amend rehabilitation periods in the Rehabilitation of Offenders (NI) Order 1978 to shorten existing rehabilitation periods and to allow more convictions to be able to become spent;
 - (iii) Provisions to facilitate the wider use of video and audio conferencing systems (commonly referred to as live links) within courts (criminal and civil) and tribunals, thereby allowing the cessation of reliance on similar provisions in the Coronavirus Act 2020;
 - (iv) Provisions to streamline arrangements for the maintenance and ease of understanding of the existing list of 1200+ sexual and violent offences that cannot be filtered from disclosure certificates by AccessNI;
 - (v) Provisions to allow for the repeal of vagrancy legislation (the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847); and
 - (vi) Provisions to tackle those who participate in or direct serious organised crime.
7. Drafting of these additional provisions is underway with a view to having all draft texts completed and available to share with the Committee before the end of this calendar year, though some will be available before then.



8. At our meeting on Monday 9 September, you queried the interplay between the biometric provisions in Part 1 of the Bill with regulations made under the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 to allow for the retention of biometric information for us by the Independent Commission for Reconciliation and Information Recovery.
9. I am pleased to be able to provide additional information in this respect in the Appendix to this written briefing.
10. I trust this is helpful to you and to the Members of the Committee.



**DAVID GRAHAM
DALO**

Enc. Appendix - Relationship between biometric retention periods contained in Part 1 of the Justice Bill and the Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024

Relationship between biometric retention periods contained in Part 1 of the Justice Bill and the Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024

Background

The current law covering biometric retention in Northern Ireland is Article 64 of the Police and Criminal Evidence (NI) Order 1989 (PACE NI). It 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. The current law was found to be in breach of Article 8 of the European Convention on Human Rights (ECHR) in the European court judgments of *Marper* and *Gaughran*.

Issue of legacy investigations

In response to the *Marper* judgment, the Criminal Justice Act (NI) 2013 (CJA) was passed by the Northern Ireland Assembly on 25 April 2013. However, it was not possible to commence these biometrics provisions due to the need to preserve biometric material that might be required for future legacy investigations. Minister Ford took the decision to delay commencement until a solution could be identified to lawfully mitigate the risk.

In terms of lawfully mitigating the risk, as the Northern Ireland Office (NIO) is responsible for policy and legislation regarding legacy matters, the NIO took forward the Northern Ireland Troubles (Legacy and Reconciliation Act) 2023.

This legislation included a power to make regulations to permit the retention of designated collections of biometric material that would otherwise be destroyed under certain statutory destruction provisions and ensures that this preserved material is available for use by the Independent Commission for Reconciliation and Information Recovery (ICRIR).

The Independent Commission for Reconciliation and Information Recovery (Biometric Material) Regulations 2024 (the 2024 Regulations) came into force on 1 May 2024 with the Regulations applying across England and Wales, Scotland and Northern Ireland.

The first designated collection included in the 2024 Regulations is material taken in Northern Ireland before 31 October 2013.

The second collection is material taken in England and Wales or Scotland from individuals arrested for, or convicted, between the dates of 1 January 1966 and 10 April 1998 relating to an offence under the following legislation:

- the Explosives Substances Act 1883;
- the Prevention of Terrorism (Temporary Provisions) Act 1974;
- the Prevention of Terrorism (Temporary Provisions) Act 1976;
- the Prevention of Terrorism (Temporary Provisions) Act 1984; and
- the Prevention of Terrorism (Temporary Provisions) Act 1989.

Officials understand that the ICRIR, the PSNI and GB police forces are involved in discussions in relation to the practicalities of retaining the designated material for use in legacy investigations, in a way that is ECtHR compliant.

The material will be time limited to the life span of the ICRIR and is not to be used for any other purpose or by any other body other than the ICRIR.

New biometric retention framework for Northern Ireland

In the intervening period, the *Gaughran* judgment in 2020 has resulted in elements of CJA being assessed as not being compliant with the ECHR. Therefore, it is necessary to bring forward amended proposals for Northern Ireland. The key elements contained within Part 1 of the Justice Bill are:

- The replacement of indefinite retention with the introduction of maximum retention periods based on the seriousness of the offence, age, criminal history, and the disposal given (in general, if the individual is not convicted, their material will not be retained, unless there is another legal reason to retain it);
- The introduction of a regulation making power that will require the police to carry out a review of long-term retained material; and
- The appointment of a new Northern Ireland Commissioner for the Retention of Biometric Material, to provide important independent oversight of the operation of the new retention framework and review process.

Once the Department's new biometrics retention framework is in place, this will result in the significant deletion of material taken under PACE NI from the databases.



The PSNI will only be permitted to delete biometric material for which there is no other legal basis to retain it.

Therefore, as provided for in the 2024 Regulations, the PSNI would not be permitted to delete any biometric material taken in NI before 31 October 2013.

The Department is liaising with the NIO and PSNI to ensure alignment of implementation of the 2024 Regulations, pending the outcome of discussions between PSNI and the ICRIR, with the new biometrics retention framework for NI.