

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice

An Roinn Dlí agus Cirt

Máinnystrie O tha Laa

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Our Ref: JCP\24\274
17 December 2024

JUSTICE BILL: DELEGATED POWERS MEMORANDUM

The Department had previously shared the Delegated Powers Memorandum with the Committee. Prior to her appearance before the Committee on 12 December 2024, the Examiner of Statutory Rules queried the Assembly control in relation to Clause 1(1) – new Art 63E(11) and Clause 3 of the Bill and we thank the Examiner for drawing these to our attention.

The Department has considered the Examiner's queries and has amended the DPM to reflect that regulations made under Clause 1(1) of the Bill – new Art 63E(11) should be subject to **negative resolution** procedure.

In relation to regulations made under Clause 3 of the Bill, there should be provision that **affirmative procedure** will apply to **regulations amending primary legislation**, **otherwise negative resolution procedure** would apply. This would be in line with Clause 31(1), which empowers the DoJ to make regulations for any particular purpose of the Act (which must include Clause 3).

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The gap has already been raised with Office of Legislative Counsel and they had indicated they would liaise with the Bills Team in due course to address this issue.

A drafting error has also come to light at para 27, which has been amended accordingly.

I have enclosed an amended version of the DPM for Members' information and apologise for any inconvenience caused.

I trust this is helpful to Members of the Committee.



**DAVID GRAHAM
DALO**

cc: Angela Kelly, Examiner of Statutory Rules

Enc: Appendix A – Delegated Powers Memorandum

DELEGATED POWERS MEMORANDUM

JUSTICE BILL

INTRODUCTION

1. The Bill gives effect to the Justice Minister's desire to improve the operation and effectiveness of the justice system.
2. At its core are four key aims, which are:
 - a) to amend retention periods for DNA and biometric material;
 - b) to make changes to bail and 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. The Bill is made up of 34 clauses over five parts and four Schedules. The Bill amends some previous legislation as well as creating new freestanding provisions.
4. Part 1 and Schedules 1 and 2 of the Bill relate to the retention of Biometric Data.
5. Part 1 of the Bill provides for the development of a framework for the retention of biometric material, including DNA and fingerprints, so that such material will no longer be kept indefinitely and will be subject to review. This Part also allows for the appointment of a new commissioner to oversee the new framework and the review process.
6. The changes respond to rulings by the European Court of Human Rights and seek to strike a careful balance between protecting an individual's right to privacy and protecting the public through making effective use of biometric material in the prevention and detection of crime.

7. Part 2 of the Bill is concerned with bail and custody arrangements for children.
8. Part 2 amends existing legislative provisions governing bail, remand and custody for children in order to enhance compliance with Article 37 of the United Nations Convention on the Rights of the Child (UNCRC).
9. It strengthens the existing presumption of bail for children by introducing unconditional bail as standard and requiring that any conditions that are applied should be proportionate and necessary.
10. It also introduces specific conditions which must be met before a child can be remanded into custody and, finally, it places in statute the current arrangements for separating children and adults in custodial settings.
11. Part 3 of the Bill relates to Use of Live Links.
12. Part 3 concerns the use of live links for police detention and interviews so that these can be dealt with more swiftly and efficiently, bringing Northern Ireland into line with existing practice in England & Wales.
13. Part 4 of the Bill relates to the Administration of Justice.
14. This part of the Bill contains a number of miscellaneous provisions relating to policing, criminal proceedings, legal aid, criminal record certificates and court security to fix errors and close lacunas in the parent legislation and address court judgments that the Department must have regard to.
15. Finally, Part 5 of the Bill deals with Final Provisions, relating to supplementary regulations; Interpretation; Commencement; and the Short Title of the Bill

16. The Bill contains the following provisions for delegated legislation:

Clause	Title	Assembly Procedure
1(1)	Retention of non-consensual material: overview and interpretation (new Article 63E-(11))	Negative resolution.
1(1)	Persons arrested for or charged with a qualifying offence (new Article 63G(4)(b))	Draft laid before and approved by resolution of the Assembly.
1(1)	Persons subject to notification requirements (new Article 63R-(4))	Draft laid before and approved by resolution of the Assembly.
1(1)	Review of retention where material retained for investigations (new Article 63T-(5))	Draft laid before and approved by resolution of the Assembly.
1(1)	Review of retention where material retained for long term (new Article 63U-(1))	Draft laid before and approved by resolution of the Assembly.
3(10)	Retention of fingerprints and DNA profiles: supplementary	Draft laid before and approved by resolution of the Assembly.
12(2)	Supervision under a youth custody and supervision order (new Article 38D-(6))	Negative resolution
27	Legal aid charges to be registrable in the statutory charges register (new paragraph 54(7))	Negative resolution
31	Further Provision	Draft laid before and approved by resolution of the Assembly if they amend any text of primary legislation. Negative resolution otherwise.
33	Commencement	Not subject to any Assembly procedure.

DELEGATED PROVISIONS

PART 1: RETENTION OF FINGERPRINTS AND DNA PROFILES

Clause 1(1): Retention of non-consensual material: overview and interpretation (new Article 63E (11) of PACE(NI))

Purpose of delegated legislation

17. A power to allow the Department to amend the nomenclature of disposals specified in Article 63E(10), which includes references to a caution, an informed warning and a restorative caution.

Reason for delegated legislation

18. The Department considers it prudent to include this power to enable terminology to be readily updated, should this be required in the future. This would ensure that there is clarity on the retention periods that should apply.

Assembly control

19. This power is subject to the negative resolution process. The Department considers that this level of scrutiny is appropriate given that any such rules will not impact on the statutory framework or operation of the provisions and are simply intended to enable updating of terminology as and when required.

Clause 1(1): Persons arrested for or charged with a qualifying offence (new Article 63G (4)(b) of PACE(NI))

Purpose of delegated legislation

20. A power to allow the Department to provide in regulations for an application to be made to the Biometrics Commissioner to retain an individual's biometric material for a period of 3 years if a person has been arrested, but not charged, for a qualifying offence and if any prescribed circumstances apply.

21. The regulations will specify the circumstances that have to be met to enable such applications to be considered and approved by the Commissioner. The regulations may also set out the procedures to be followed in making any such application.

Reason for delegated legislation

22. The Department considers that it is appropriate to set out the prescribed circumstances in regulations, given the detailed nature of the specified circumstances to be complied with as part of any application being brought by the Chief Constable, and to enable any updates or amendments to be made more efficiently if considered necessary in the future.

Assembly control

23. By virtue of Clause 2(b) and Schedule 2, Part 2, paragraph 11 the regulations at new Article 63G(4)(b) cannot be made unless laid in draft before, and approved by, the Assembly.
24. This level of scrutiny is considered appropriate due to the sensitive nature of the provision.

Clause 1(1): Persons subject to notification requirements (new Article 63R (4) of PACE(NI))

Purpose of delegated legislation

25. A power to allow the Department to amend the list of notification requirements set out in new Article 63R(3), which includes references to notification requirements under the Sexual Offences Act 2003, the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, the Justice Act (Northern Ireland) 2015 and the Protection from Stalking Act (Northern Ireland) 2022.

Reason for delegated legislation

26. The Department considers that it would be prudent to create a power for it to amend the list of notification requirements currently listed under Article 63R(3) to enable any other relevant provision to be brought within scope, should this be required at a future stage (e.g. if a new notification requirement is introduced).

Assembly control

27. By virtue of Clause 2(b) and Schedule 2, Part 2, paragraph 11 the regulations at new Article 63R(3) cannot be made unless laid in draft before, and approved by, the Assembly. Since this delegated power allows amendments to be made to primary legislation, the Department considers it appropriate that any exercise of the power should be the subject of Assembly debate.

Clause 1(1): Review of retention where material retained for investigations (new Article 63T(5) of PACE(NI))

Purpose of delegated legislation

28. A power to allow the Department to make regulations to set out additional factors that the Chief Constable must consider, or factors that he may or must not consider in conducting a review.
29. Article 63T requires the Chief Constable to review every five years the need to continue retain material held under Article 63F (Retention of Article 63B material pending investigation or proceedings). This is intended to provide a safeguard to ensure that material is not held any longer than is necessary. The Department is required to consult such persons as it considers appropriate before making regulations.

Reason for delegated legislation

30. The Department considers that there may be a need to specify additional factors to be considered by the Chief Constable when reviewing material retained for investigations.

31. It is considered appropriate to make this provision in regulations to enable any factors to be easily added or amended if required in the future.

Assembly control

32. By virtue of Clause 2(b) and Schedule 2, Part 2, paragraph 11 the regulations at new Article 63T(5) cannot be made unless laid in draft before, and approved by, the Assembly. This level of scrutiny is considered appropriate due to the sensitive and detailed nature of the subject matter to be covered in the regulations.

Clause 1(1): Review of retention where material retained for long term (new Article 63U(1) of PACE(NI))

Purpose of delegated legislation

33. A power to allow the Department to make regulations to require the Chief Constable to review the retention of long term retained material. Article 63U(3)-(5) sets out the key elements the regulations should cover, including conferring a right of appeal against a determination made on a review, and the procedure for such appeals. The Department is required under Article 63U(8) to consult such persons as it considers appropriate before making regulations.

Reason for delegated legislation

34. The new statutory requirement for the Chief Constable to review the need to continue to retain long term retained material, i.e. retained for 25/50/75 years, is intended to provide an important safeguard, thereby ensuring that material is not held any longer than is necessary.
35. The Department considers it appropriate to set out the detailed arrangements for the review mechanism in regulations. This will provide clarity on the requirements of the process and enable the detail to be more easily amended if considered necessary in the future.

Assembly control

36. By virtue of Clause 2(b) and Schedule 2, Part 2, paragraph 11 the regulations at new Article 63U(1) cannot be made unless laid in draft before, and approved by, the Assembly. This level of scrutiny is considered appropriate due to the sensitive and detailed nature of the subject matter to be covered in the regulations.

Clause 3(10): Retention of fingerprints and DNA profiles: supplementary

Purpose of delegated legislation

37. A power to allow the Department to make regulations to make such further transitional, transitory or saving provisions necessary to bring the provisions of Part 1 of the Bill into operation.

Reason for delegated legislation

38. The Bill makes wide ranging and complex changes to the law including existing primary legislation.
39. While every effort has been made to identify consequential amendments and transitional provisions, it is possible that not all of the consequences have been identified. This provision is intended to enable any such consequential and other provisions to be made, to ensure that the provisions of the Bill operate as the Assembly intended.

Assembly control

40. To the extent that any regulations under this Clause amends primary legislation, it will be laid before, and approved by resolution of, the Assembly, otherwise negative resolution.
41. This level of scrutiny is considered appropriate due to the detailed nature of the subject matter to be covered in the regulations and because they enable amendments to be made to primary legislation.
42. Otherwise, any regulations under Clause 3(10) will be subject to negative resolution.

Clause 12(2): Supervision under a youth custody and supervision order (new Article 38D(7) of the Criminal Justice (Children) (Northern Ireland) Order 1998)

Purpose of delegated legislation

43. A power to allow the Department to make rules regarding the supervision of an offender subject to a youth custody and supervision order.

Reason for delegated legislation

44. This delegated power will enable the Department, in due course, to establish rules which regulate the community supervision element of the new youth custody and supervision order. Such rules will be informed by the operation of the new order in practice and are therefore more suited to subordinate legislation. They will not, however, deal with any matter which is regulated by rules established under Article 44 of the Criminal Justice (Northern Ireland) Order 2008, which relates to electronic monitoring and curfew requirements under the order.

Assembly control

45. Rules developed under new Article 36D(6) will be subject to the negative resolution procedure in the Assembly. The Department considers that this level of scrutiny is appropriate given that any such rules will not impact on the statutory framework or operation of the new order and are simply intended to enable appropriate supervision of individuals, based on operational experience.

Clause 27(7) Legal Aid charges to be registerable in the statutory charges register

Purpose of delegated legislation

46. A power to allow the Department to specify a relevant day for any other description of property than that set out in paragraph (6) of Clause 27.

Reason for delegated legislation

47. Clause 27 will provide for the registration of charges on the statutory charges register from the date of Royal Assent for charges over property meeting the conditions stipulated at Clause 27(6), i.e. charges over property recovered for or by a person in land over which they have a legal estate.
48. Clause 27(7) is a commencement provision that empowers the Department to extend the effect of Clause 27 to enable charges other than those described at Clause 27(6) also to be registered in the same way.
49. This construction achieves two aims. It limits the immediate effect of Clause 27 to only those charges specifically expected by the Department to require registration in this way, so avoiding any unintended application to other types of charge.
50. It also permits the subsequent application of the provision to other categories of charge not currently identified as requiring registration, should the need arise, without the need for further primary legislation.

Assembly control

51. This power is subject to the negative resolution process.

PART 5: FINAL PROVISIONS

Clause 31: Further provision

Purpose of Delegated Legislation

52. Clause 31 confers power on the Department of Justice to bring forward regulations to make such supplementary, incidental, consequential, transitional, transitory or saving provision as it considers necessary for the purposes of the Bill.

Reason for Delegated Legislation

53. The Bill makes wide ranging and complex changes to the law including existing primary legislation.
54. While every effort has been made to identify consequential amendments and transitional provisions, it is possible that not all of the consequences have been identified. This provision is intended to enable any such consequential and other provisions to be made, to ensure that the provisions of the Bill operate as the Assembly intended.

Assembly Control

55. To the extent that an order under this Clause amends or repeals primary legislation, it will be laid before, and approved by resolution of, the Assembly. Otherwise, an order under Clause 31 will be subject to negative resolution.

Clause 33: Commencement

Purpose of Delegated Legislation

56. The power in Clause 33(3) has been provided to enable certain provisions of the Bill to be brought into operation by Commencement Order made by the Department.

Reason for Delegated Legislation

57. The delegated power has been provided to enable provisions of the Bill to be brought into force on a date determined by the Department, when appropriate administrative and other arrangements have been made.

Assembly Control

58. By virtue of clause 33, as is usual with commencement orders, these are not subject to any Assembly procedure.