CONVENTION RIGHTS MEMORANDUM

VICTIMS AND WITNESSES OF CRIME BILL

INTRODUCTION

1. This memorandum has been prepared for the Committee for Justice ('the Committee') to assist with its scrutiny of the Justice Bill ('the Bill').

2. The Bill was introduced on 22 June 2026. This memorandum addresses issues arising under the European Convention on Human Rights ('the Convention') and Article 2(1) of the Windsor Framework ('Article 2(1)'), in relation to the Bill. It has been prepared by the Legal Services Office.

3. The memorandum does not constitute legal advice, but sets out whether this Bill engages Convention rights. Where a clause of the Bill may occasion interference with one or more Convention rights, that clause may merit further scrutiny by the Committee and discussion with the Department for Justice ('the Department').

4. Where a clause of the Bill may engage rights which fall within the scope of Article 2(1), the rights issues in those clauses are set out. That clause may also merit further scrutiny and discussion with the Department to identify any potential incompatibility with Article 2(1).

5. Clauses are analysed in groups where appropriate.

6. The Convention rights given effect in domestic law are set out at Annex A to this memorandum. The text of Article 2(1) of the Windsor Framework and its associated annex is at Annex B to the memorandum.

7. This memorandum addresses the provisions of the Bill as introduced. A separate memorandum will address the amendments provided to the Committee by the Department during the Committee stage.

SUMMARY OF THE BILL

8. The Bill consists of 30 clauses and 2 schedules. The Bill is divided into three substantive parts.

9. **Part 1 and the associated Schedules 1 and 2** of the Bill establish the Office of Commissioner for Victims and Witnesses of Crime for Northern Ireland, its functions and powers.

10. **Part 2** of the Bill amends the law to provide for special measures in cases involving aggravation by hostility, complainant participation on application for witness summons in trials on indictment for sexual offences and restrictions on the power of the Court to dismiss charges involving death or serious physical harm of a vulnerable person, where a defendant is also charged with an offence under section 5 of the Domestic Violence, Crime and Victims Act 2004.

11. **Part 3** contains provisions on regulation-making powers, interpretation and commencement.

SECTION 1: CONVENTION RIGHTS

13. This section sets out the Convention rights[1] which the Legal Services Office considers may be engaged by the Bill. These Convention rights are marked in the table below.

Part I	**The Convention Rights and Freedoms**	Engaged?
Article 2	Right to life	
Article 3	Prohibition of Torture	
Article 4	Prohibition of slavery and forced labour	
Article 5	Right to liberty and security	
Article 6	Right to a fair trial	X
Article 7	No punishment without law	
Article 8	Right to respect for private and family life	X
Article 9	Freedom of thought, conscience and religion	
Article 10	Freedom of expression	
Article 11	Freedom of assembly and association	
Article 12	Right to marry	
Article 14	Prohibition of discrimination	
Part II	**The First Protocol**	
Article 1	Protection of Property	
Article 2	Right to Education	
Article 3	Right to free elections	

[1] As set out in Section 1(1) and Schedule 1 of the Human Rights Act 1998, see Annex A for further guidance

CLAUSES FOR FURTHER CONSIDERATION

15. This section of the memorandum only deals with provisions of the Bill which may raise Convention rights issues. The remaining provisions of the Bill are not considered to engage the Convention rights.

Clauses 11

16. Clause 11(1)(b) requires a charter service provider, specified in the Victim Charter, to collect and retain, or arrange for the collection and retention of, any data that is reasonably required for the purpose of providing the Commissioner with such statistics relating to the provision of relevant services. A 'charter service provider' is one of the criminal justice agencies set out at clause 9 of the Bill or other criminal justice agencies specified in regulations made by the Department. However, it is assumed that not all such charter service providers will be specified in the Victim Charter.

Right engaged: Article 8

17. Article 8 of the Convention provides that everyone has a right to respect for his private and family life, his home and his correspondence. As this provision requires specified charter service providers to collect and retain, or arrange for the collection and retention of, any data which may contain sensitive personal data on *'any information relating to an identified or identifiable individual',* it is likely to engage Article 8 of the Convention. The Committee will note that the data retained should only be that which *is 'reasonably required'*, for the purpose.

18. The Committee may wish to discuss with the Department whether any interference with the Article 8 rights of the person from whom the data is sought and retained is justified and a proportionate means of achieving a legitimate aim (the aim, in this case, being to collect and retain information required to inform statistics relating to the provision of relevant services by a charter service provider).

Clause 20

19. Clause 20 of the Bill provides that for the purposes of the law of defamation, publication by the Commissioner of any matter which the Commissioner is required or authorised to publish under this Act is absolutely privileged.

Rights engaged: Article 6 and 8

20. Clause 20 is likely to engage Articles 6 & 8 as a person whose reputation was damaged by a publication of the Commissioner has no actionable claim so as to engage the procedural safeguards set down in Article 6(1) of the Convention and/or the substantive right enshrined in Article 8 of the Convention. The

European Court of Human Rights ('the ECtHR') is clear that the '*right of access to a court is not absolute, but may be subject to limitations*'[2]. However, a limitation will not be compatible with Article 6(1) and by extension Article 8 of the Convention, *'if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved.*'[3]

21. The Committee may wish to enquire from the Department whether the interference placed on a person's access to court likely to arise from clause 20, pursues a legitimate aim and is a proportionate means of achieving the legitimate aim.

Clause 25

22. Clause 25 inserts a new Article 22C into the Criminal Evidence (Northern Ireland) Order 1999. This Article provides that where a person is charged with an offence 'involving aggravation by hostility', they will not be permitted to, in criminal proceedings, cross examine in person a witness who is the complainant, either in connection with the offence or in connection with any other offence (of whatever nature) with which that person is also charged in the proceedings.

Right engaged: Article 6

23. Article 6 of the Convention provides, so far as is relevant, as follows—

'(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing…

(2) ...

(3) Everyone charged with a criminal offence has the following minimum rights:

(a) …

(b) …

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) ...'

24. Article 6 (3) (c) provides that a witness has a right to 'defend him[/her]self in person' and Article 6 (3) (d) of the Convention provides that a person must have a right to examine witnesses or have those witnesses examined (generally by

[2] A. v. THE UNITED KINGDOM s74

[3] ibid (n2)

legal representatives). As such, a provision which prevents a person from, in person, cross examining a witness who is a complainant may engage the procedural aspects of Article 6 (1) and 3 (d) of the Convention.

25. In assessing whether a person's Article 6 (1) rights have been infringed, the primary concern is an evaluation of the overall fairness of the criminal proceedings. Article 6 (3) (d) forms part of a list in paragraph 3 of specific aspects, which must be considered in any assessment of the fairness of criminal proceedings, as a whole. The published guidance of the Council of Europe on the right to represent oneself is as follows—

    'the right to defend oneself in person is not guaranteed in absolute terms. Whether to allow an accused to defend himself in person or to assign him a lawyer falls within the margin of appreciation of the Contracting States, which are better placed than the Court to choose the appropriate means within their judicial system to guarantee the rights of the defence'.[4]

26. The Committee may wish to raise with the Department whether the provisions of clause 25, which limit a person's right to cross examine a witness in person in certain circumstances, will still allow criminal proceedings to which the clause applies to continue to be conducted fairly, as a whole. The Committee will recognise that the state has a margin of appreciation in these matters.

Clause 26

27. Clause 26 of the Bill inserts a new Article 27G into the Criminal Evidence (Northern Ireland) Order 1999. This Article provides, where a person is to be tried on indictment for sexual offences and they make application for a witness summons which will require the production of evidence, documentation or other such things which contains information relating to the complainant, which the complainant could have a reasonable expectation of privacy, the complainant is to be given an opportunity to make an oral or written representations to court about the application and is entitled to be present and legally represented (whether or not the complainant is present) at any hearing of the application.

28. The provision also states that, inter alia, rules of court may make provision for the manner in which confidential or sensitive information is to be treated in connection with the application, and in particular as to its being disclosed to, or withheld from, parties to the proceedings.

Rights engaged: Article 6

29. The new Article strengthens a complainant's ability to challenge the disclosure of information to which the complainant has a reasonable expectation of privacy

[4] Guide on Article 6: Rights to a fair trial (criminal limb), [282]

and as such, it is likely to engage the procedural aspect of Article 6 of the Convention.

30. The ECtHR has consistently held that *'it is a fundamental aspect of the right to a fair trial that criminal proceedings, including the elements of such proceedings which relate to procedure, should be adversarial and that there should be equality of arms between the prosecution and defence'*[5]. However, the ECtHR also acknowledges that the entitlement to disclosure of relevant evidence is not an absolute right. There are competing interests between the need to protect complainants and/or witnesses which must be weighed against the right of the accused[6].

31. For any limitation to be placed on an accused right of defence, it must be strictly necessary and counterbalanced (to remedy any unfairness) by procedures to be followed by the court.

32. The weight to be accorded to representations made by a complainant will be a decision for the court hearing the criminal charge. This court will be under an obligation to respect the Convention rights of the accused when considering the views of the complainant.

[5] Rowe and Davis v. the United Kingdom 60
[6] Ibid (n5) 61

SECTION 2: ARTICLE 2(1) OF THE WINDSOR FRAMEWORK

33. Section 6(2)(ca) of the Northern Ireland Act 1998 Act states that a provision is outside the legislative competence of the Assembly if it is incompatible with Article 2(1) of the Protocol on Ireland/ Northern Ireland in the EU withdrawal agreement (now known as the Windsor Framework – 'WF').

34. Article 2(1) WF requires the UK Government to ensure that there is no diminution of rights, safeguards or equality of opportunity ('RSEO') as set out in the relevant chapter of the Belfast Good Friday Agreement ('the Agreement'), including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 of the Framework.

35. In *Dillon*[7], the UK Supreme Court ('UKSC') considered whether Article 2(1) WF could have direct effect and set out that that

> *'While the provisions of paragraphs 1, 11, and 12 of the RSEO chapter do not themselves have direct effect, article 2(1) of the Windsor Framework may be capable of having direct effect in conjunction with other EU instruments falling within the ambit of the RSEO chapter if the Demirel requirements are satisfied in respect of the obligation imposed.'.*

36. Demirel[8] sets out that: *'…a provision in an agreement concluded by the European Union with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure...'*

37. In determining whether there is a breach of Article 2(1) WF, the UKSC considered the following test[9]:

    i. Is a right, safeguard or equality of opportunity that falls within the RSEO chapter of the Belfast Agreement engaged?

    ii. If so, did that right, safeguard or equality of opportunity have legal effect in Northern Ireland on 31 December 2020 and was it underpinned by EU law?

    iii. Was there a diminution of that right, safeguard or equality of opportunity as a result of the United Kingdom's withdrawal from the EU?

38. The European Union's competence to regulate criminal procedure in Member States is limited. However, six Directives have been adopted by the European Union relating to procedural rights for suspects and accused persons and one in

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[7] *In the matter of an application by Martina Dillon, John McEvoy, Brigid Hughes and Lynda McManus for Judicial Review (Respondents)* [2026] UKSC 15 at [128]

[8] Case 12/86 *Demirel v Stadt Schwabisch Gmund* [1987] ECR 3719 [14]

[9] Ibid (n7) [128]

relation to ensuring that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

39. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime ('the Victims Directive') may be thought to contain *'a clear and precise obligation'* which applies in law without the adoption of any further measure.

40. Part 1 and the associated Schedules 1 and 2 of the Bill establishes the Office of Commissioner for Victims and Witnesses of Crime for Northern Ireland, its functions and powers. As such, the Committee may wish to raise with the Department whether Part 1 and its associated Schedules 1 and 2 diminish any of the rights set out in the Victims Directive.

41. Article 7(2) of Directive 2012/13/EU on the right to information in criminal proceedings may also be thought to contain a *'clear and precise obligation'* which also applies in law without the adoption of any further measure. It provides that *'Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence'.*

42. The Committee may wish to consider this right in light of clause 26 of the Bill, which modifies the law of criminal evidence to strengthen a complainant's ability to resist disclosure of their information, where they have a *'reasonable expectation of privacy'* in relation to the information sought. However, the Committee will note that Article 7(4) of Directive 2012/13/EU qualifies the right, and that decisions on the admissibility of evidence are ultimately a matter for a court, as required by Article 7(4).

Legal Services Office
October 2026

ANNEX A: THE CONVENTION RIGHTS AND FREEDOMS

Article 2: Right to life

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3: Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4: Prohibition of slavery and forced labour

(1) No one shall be held in slavery or servitude.

(2) No one shall be required to perform forced or compulsory labour.

(3) For the purpose of this Article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.

Article 5: Right to liberty and security

(1) Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

(2) Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

(3) Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

(4) Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

Article 6: Right to a fair trial

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights:
   (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   (b) to have adequate time and facilities for the preparation of his defence;
   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7: No punishment without law

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

(2) This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8: Right to respect for private and family life

(1) Everyone has the right to respect for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9: Freedom of thought, conscience and religion

(1) Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

(2) Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society

in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10: Freedom of expression

(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11: Freedom of assembly and association

(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Article 12: Right to marry

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

Article 14: Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 16: Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17: Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18: Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Article 1 of the First Protocol: Protection of property

(1) Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

(2) The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2 of the First Protocol: Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 3 of the First Protocol: Right to free elections

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

ANNEX B: ARTICLE 2 OF THE WINDSOR FRAMEWORK

Article 2: Rights of individuals

(1) The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination, as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.

(2) The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

Annex 1: provisions of Union law referred to in Article 2(1)

- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services1
- Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation2
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin3
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation4
- Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC5
- Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security