

JUSTICE BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial Memorandum has been prepared by the Department of Justice in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and nor is it meant to be, a comprehensive description of the Bill. So, where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. The Bill gives effect to the Justice 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 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.
4. In practice, there is a degree of interaction between these aims and the provisions of the Bill that will often advance more than one of its core aims.
5. A more detailed description of the background and policy objectives for each of the constituent parts of the Bill is set out in the Overview section at pages 13 to 21 of this Memorandum.

CONSULTATION

6. The major components proposed for inclusion in the Bill have been the subject of public consultation exercises while a number of the more technical and procedural improvements were the subject of targeted or specialist consultation.

7. For each consultation exercise, the Justice Committee received presentations on summaries of responses and ways forward. The various consultation and response documents are available to view at the hyperlinks listed individually below.

Part 1: Biometric Data: Retention etc

8. A consultation on proposals to amend the legislation governing the retention of DNA and fingerprints in NI ran for 8 weeks from 3 July 2020 to 28 August 2020.
9. The consultation document is available to view at: <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/consultation-on-biometrics-provisions.pdf>.
10. The summary of responses document is available to view at: <https://www.justice-ni.gov.uk/sites/default/files/consultations/justice/biometrics-provisions-summary%20of%20responses.pdf>.

Part 3: Organised Crime Groups

11. A consultation to seek views on a range of proposals to reinforce the response to organised crime through the introduction of specific legislative provisions, including a statutory definition of serious organised crime and new offences of ‘directing’ organised crime; ‘participating’ in organised crime and provision for relevant offences to be ‘aggravated’ by a connection with organised crime ran from 10 July 2020 to 2 October 2020.
12. The consultation document is available to view at: [Consultation on policy proposals for new provisions to tackle organised crime in Northern Ireland](#)
13. The summary of responses document is available to view at: [Outcome of the consultation on policy proposals for new provisions to tackle organised crime in Northern Ireland.pdf](#)

Part 4: Other Criminal, Anti-social and Abusive Behaviour

Repeal of Public Order Offences

14. The Department, in liaison with the PSNI, carried out a review of the existing vagrancy legislation in Northern Ireland which identified that the only gap in provision left by repeal would be the inability of the police to deal with ‘simple begging’. A public consultation to seek views on plans to decriminalise rough sleeping and begging by repealing the relevant provisions of the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847, without the need for replacement legislation, ran from 20 November 2024 to 31 January 2025.
15. The consultation document is available to view at: [Vagrancy consultation paper.pdf](#)

16. The summary of responses document is available to view at: [Vagrancy Repeal - Summary of Responses and Next Steps](#)

Part 5: Use of Live Links

Police Detention and Interviews

17. A targeted consultation on proposals on the use of live links for police detention / interviews ran for 6 weeks from 20 April 2020 to 1 June 2020. The consultation period was shorter than the statutory 8 week maximum for public consultation exercises as it was only directed to key stakeholders.
18. The consultation document and summary of responses document are available to view at: [Live links consultation outcome - summary of responses | Department of Justice \(justice-ni.gov.uk\)](#).

Expanded use of live links by Courts and Tribunals

19. A public consultation on proposals to chart the way forward for the expanded use of live links within the future operation of courts and tribunals ran from 29 July 2022 to 30 September 2022. “Live links” is the generic term commonly used when referring to either telephone or audio only conference systems or video conference systems within the courts or tribunals operating within the justice system.
20. The consultation document is available to view at: [Consultation document Live Links for courts and tribunals in NI 29 July 2022.pdf](#)
21. The summary of responses document is available to view at: [report-on-consultation-upon-audio-video-links-summary-of-responses \(5\).pdf](#)
22. Following the return of the Executive in February 2024 a report was published in September 2024 reflecting the Minister’s decisions on the way forward, which is available to view at: [summary report audio and video links for NICTS - hearings.pdf](#)

Part 6: Administration of Justice

Police Discipline

23. Police Misconduct Matters Consultation – a targeted 9-week key stakeholder consultation closed on the 2 October 2025.

Rehabilitation of Offenders

24. A consultation to seek views on proposals to reform rehabilitation periods in Northern Ireland to reflect changes in sentencing practices and developments in other jurisdictions ran from 8 January 2021 to 5 March 2021.
25. The consultation document is available to view at: [Rehabilitation-consultation-2021.pdf](#)
26. The summary of responses document is available to view at: [Rehabilitation of Offenders consultation - summary of responses and way forward.pdf](#)

Matters to be included in Criminal Record Certificates

27. A consultation on proposals arising from a Review of the List of Specified Offences, which sets out the serious and violent crimes that are not subject to the AccessNI Filtering Scheme, ran from 3 July 2023 to 25 September 2023.
28. The consultation document is available to view at: [Consultation paper - review of list of specified offences.pdf](#)
29. The summary of responses document is available to view at: [List of specified offences consultation Summary Report - December 2023](#)

Aspects where consultation was not considered necessary

30. A number of provisions were not consulted upon prior to inclusion in the Bill.
31. This was because they had either been subject to full consultation or targeted consultation with key stakeholders previously – in anticipation of provisions being developed for inclusion in a suitable primary legislation vehicle – or because the provisions closed a lacuna in law for which no other legislative solution existed.
32. The individual circumstances for each of these aspects of the Bill are as set out below.

Part 2: Children; Bail and Custody

33. The provisions relating to children's bail and remand and custody are aimed at delivering on a range of recommendations from relevant reports and reviews carried out in relation to the youth justice system.
34. These were subject to public consultation at the time. The proposed changes have, therefore, been developed in order to assist with the implementation of the resulting recommendations and are not, in themselves, a new policy which requires a new or separate consultation.

Part 6: Administration of Justice:

Functions relating to the police

Delegation of functions of the Policing Board

35. The provisions seek to amend the Police (Northern Ireland) Act 2000 to provide the Northern Ireland Policing Board (NIPB) with the power to delegate certain matters to Board officials. The amendments are considered minor and uncontroversial administrative changes and as such did not require consultation.
36. This power is being sought in response to the judgment in the case of *McKee and Others v Charity Commission NI*

Removal of requirement to audit performance plans etc.

37. The provisions seek to amend the Police (Northern Ireland) Act 2000 (“the 2000 Act”) to remove the requirement on the Comptroller & Auditor General (C&AG) to audit the Northern Ireland Policing Board’s (NIPB) performance plan or performance summary.
38. This amendment is being made following a recommendation by the C&AG and would bring the position in Northern Ireland into line with that in England and Wales. The repeal of section 29 of the 2000 Act would remove some potential overlap and duplication in oversight activity and enable the C&AG to focus on financial accountability.
39. The Department considered the C&AG’s recommendation as part of a wider stocktake of policing oversight and accountability arrangements. The stocktake involved a series of meetings involving the Minister of Justice and key stakeholders, including the full membership of the Policing Board, and a public consultation, which ran from December 2021 to March 2022.

Powers to photograph certain persons at a police station

40. The proposed new DNA and fingerprints retention framework for Northern Ireland was the subject of a public consultation in July / August 2020. Powers enabling the PSNI to recall individuals to have their DNA and fingerprints taken are already set out in legislation (i.e. Section 12 of the Crime and Security Act 2010) but have not yet been commenced. Section 12 will be commenced in parallel with the commencement of the new retention framework for Northern Ireland.
41. The section 12 powers currently only provide for the taking of fingerprints and DNA but do not include photographs. This reflected similar provisions in England and Wales. However, in England and Wales this gap in the legislation was addressed via section 52 of the Police, Crime, Sentencing and Courts Act 2022.

42. The proposed amendment therefore seeks to utilise the opportunity provided by the Justice Bill to bring powers in Northern Ireland in line with England and Wales, and to improve the operation of the new retention framework in Part 1 of the Bill, by clarifying that a photograph may also be taken at the same time as DNA and fingerprints when an individual is recalled to a police station.

Criminal Proceedings

Consent for prosecution in cases of conspiracy to commit offence outside Northern Ireland

43. No formal consultation has been held by the Department as this is not a new policy, rather it makes amendments to existing legislation relating to conspiracy to commit offences outside Northern Ireland to correct an error in the law. It provides that the consent of the Advocate General for Northern Ireland is required when instituting criminal proceedings in Northern Ireland, as intended.

Death of a child or vulnerable adult: limitation of power to “No Bill” alternative charge

44. No formal consultation has been held by the Department as this is not a new policy and is intended to close a gap in the law to provide that a judge can enter a “No Bill” on a charge such as murder or manslaughter only if the judge also enters a “No Bill” on the related charge under section 5 of the Domestic Violence, Crime and Victims Act 2004 (*causing or allowing a child or vulnerable adult to die*).

Examination in criminal proceedings through intermediary

45. Paragraph (1) of Article 21BA (examination of accused through intermediary) of the Criminal Evidence (Northern Ireland) Order 1999 provides for the examination of the accused (whether in a Magistrates’ Court, or before the Crown Court) against a person for an offence.
46. There is no provision in legislation for the use of a Registered Intermediary where a case then proceeds to an appeal hearing and the defendant has to give evidence at that court tier. It is proposed to amend paragraph (1) of Article 21BA to include the examination of the accused in the County Court on an appeal by a person under Article 140 or 141 of the Magistrates’ Courts (Northern Ireland) Order 1981, and in the Court of Appeal on an appeal by a person under section 1 or 8 of the Criminal Appeal (Northern Ireland) Act 1980.
47. This was identified as a gap in provision by the DoJ-led Victim and Witness Steering Group, which is attended by all key stakeholders. It was agreed a vulnerable defendant with communication difficulties may not be able to participate effectively in the proceedings as a witness giving oral evidence in court without the assistance of a Registered Intermediary.

48. The VWSG is a strategic group, comprised of senior leaders across criminal justice organisations as well as victim representative groups.
49. It was considered that no further consultation was necessary given the significant engagement with relevant stakeholders on the issue through VWSG as there is no other suitable option that would meet the policy intent of closing the gap in provision.
50. The provision in the Bill is needed to address this legislative gap and ensure that this assistance is available, without having to rely on inherent court powers to provide for this.

Transfer of functions related to Restorative Justice Schemes

51. These provisions, which deal with the accreditation and registration of organisations accredited to deliver Restorative Justice services, correct a previous omission when relevant functions were transferred from the Northern Ireland Office to the Department of Justice on devolution of policing and justice, meaning that the power remained, incorrectly, with the Secretary of State for Northern Ireland.
52. These provisions remedy that error by transferring the relevant powers to the Department of Justice, as originally intended. No formal consultation was therefore required to correct this administrative oversight.
53. In doing so, the legislation is being updated to reflect updated requirements for accreditation which have been consulted on during the development of the Adult Restorative Justice Strategy and the new 2023 Protocol governing restorative justice in Northern Ireland.

Legal aid

Land Registration Act 1970

54. This is a technical amendment to the Land Registration Act (Northern Ireland) 1970. It has been a long-standing policy of the Legal Services Agency that the legal aid fund be protected by applying a statutory charge to property recovered or preserved through funded civil proceedings.
55. The effect of the amendment is that the Legal Services Agency will be in a position to register true statutory charges against property recovered or preserved through proceedings funded by civil legal aid, rather than registering such charges on the folio of the property recovered or preserved.

Taxation

56. These provisions amend the Access to Justice (Northern Ireland) Order 2003 to clarify that when the Department make remuneration orders under Articles 12(3) and 24(3) those orders may include provision about how any person who is to determine the amount of remuneration may, or must, determine the amount to be paid. The purpose of the amendments is to ensure that where costs for proceedings in the High Court and Court of Appeal are assessed by the Taxing Master, and those costs are to be paid out of the legal aid fund, the Taxing Master will apply the rates and arrangements set out in a remuneration order made by the Department.
57. The Department has engaged with key stakeholders – including representative bodies of the legal profession – to make them aware that these provisions are being included in the Bill, and to confirm that before any new rates and arrangements are introduced under secondary legislation, the Department will consult the statutory consultees alongside a public consultation, and the relevant impact assessments will be published with the consultation. All responses and available evidence will be considered, and the Department will ensure that any new rates and arrangements are fully compliant with all relevant statutory criteria.
58. The Justice Committee will be updated before the statutory and public consultation on the making of any secondary legislation. The new remuneration arrangements will be subject to negative resolution, and the scrutiny of the Justice Committee and the Assembly. The new arrangements will ensure that the cost to the legal aid fund of taxed cases, which is approximately 25% – 30% of total legal aid expenditure, comes under the purview of the Department, and is subject to Assembly scrutiny, in line with recommendations made by the Public Accounts Committee.
59. The Department has also engaged with the Lady Chief Justice’s Office and the Taxing Master to inform them of the intention of this provision. There will be further engagement with the Taxing Master, Legal Services Agency and the legal profession to ensure that the new arrangements brought in by secondary legislation can be smoothly implemented administratively.

Criminal Record Certificates

60. There was no consultation held in relation to these proposals for two reasons. The first is that the proposed change is as a direct result of the outcome of the Supreme Court case. The current legislation that restricts automatic reviews of “other disposals” to certificates where all information to be disclosed occurred when a person was under 18, would not comply with the judgment. Therefore, the legislation must be amended.

61. Secondly, the Department is aware that the Northern Ireland Children's Commissioner and other groups representing young people and groups that represent ex-offenders, such as NIACRO, would prefer, as an alternative to any scheme to filter out old and minor youth non-court disposals to see the full implementation of Recommendation 21 of the 2011 Youth Justice Review system in Northern Ireland (YJR).
62. This recommendation stated that (a) diversionary disposals should not attract a criminal record or be subject to employer disclosure and (b) young offenders should be allowed to apply for a clean slate at age 18.
63. A previous Minister of Justice had determined rather than proceeding with Recommendation 21 of the YJR that a scheme of filtering out old and minor convictions and other disposals should be introduced, with specific safeguards built in for those with convictions and other disposals that occurred at a time when they were aged under 18.
64. In bringing forward an amendment to the legislation, the Minister of Justice considers that a blanket policy of not disclosing any other disposals occurring when a person was aged under 18 in any circumstances could potentially create safeguarding risks to vulnerable groups.
65. The proposed amendment will reduce the number of such disclosures and in all cases disclosure of any other disposal occurring from a time when a person was aged under 18 will only be made where the Independent Reviewer believes that it should be permitted. This is line with a recommendation made by the Independent Reviewer in her 2020 Annual Report.

Court Security

66. The provisions are sought on foot of security recommendations and in consultation with the Chief Operating Officer of the Northern Ireland Courts and Tribunals Service and the President of the Appeal Tribunals. No formal consultation was considered necessary on this occasion.

OPTIONS CONSIDERED

Part 1: Biometric data: retention etc.

67. The options considered were:
 - (1) Do nothing;
 - (2) Keep with original consultation proposals;

- (3) Take on board feedback received as part of the consultation process and amend proposals.
68. It was not possible to do nothing as the current legislation is in violation of two European Court judgments.
69. Given the nature of the subject matter, there was a mix of views received in response to the consultation. Some respondents felt the proposals went too far, while others felt they did not go far enough in terms of ECHR compliance.
70. In response, the Department made some revisions to the original policy proposals, namely:
- around the criteria for inclusion of material within each maximum retention band; and
 - extending the scope of the Northern Ireland Commissioner for the Retention of Biometric Material, to include keeping under review the operation of the biometric retention framework.

Part 4: Other Criminal, Anti-Social and Abusive Behaviour

Repeal of Public Order Offences

71. The public consultation on repeal of vagrancy legislation sought views on:
- (1) the Department's plans to decriminalise rough sleeping and begging by repealing the relevant provisions in the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847 for Northern Ireland without the need for replacement legislation; and
 - (2) what, if any, gaps in the criminal law would be left by repeal, taking into account the range of other offences available to deal with public order, disorderly behaviour and harassment in public places.
72. The majority of respondents supported the proposals to decriminalise rough sleeping and begging and no gap in existing law was identified that would prevent the police from dealing with those who were sleeping rough or simply begging, where their behaviour would cross the criminal threshold. The Minister decided to proceed with repeal without replacement legislation.

Part 5: Use of Live Links

Police Detention and Interviews

73. The options for the proposals on the use of live links for police detention/interviews were:

(1) Do nothing;

(2) Limit what custody functions live links could be used for.

74. Live links have been in use in England & Wales for police detention and interviews since 2018. Both the Police Service of Northern Ireland (PSNI) and the Superintendents Association Northern Ireland (SANI) had requested the extension of these specific powers to Northern Ireland.

75. Doing nothing was not an option as both the Minister and Permanent Secretary had given commitments to PSNI and SANI include these provisions at the first legislative opportunity.

76. In terms of the second option, which was to limit what custody functions live links could be used for, i.e. to restrict the provision to the extension of detention only and to not include the extension of live link to police interviews, officials considered that it was beneficial to keep the live link interview provision to provide future flexibility options for the PSNI, giving particular consideration to the Covid-19 pandemic, supported by appropriate safeguards in the PACE codes of practice.

Expanded use of live links by Courts and Tribunals

77. The consultation sought views on a number of options relating to:

- the statutory test for deciding upon the use of live links by persons to attend remotely.
- legislating to specify factors that the court would have regard to or be required to consider in determining whether the use of live links was ‘in the interests of justice’.
- Whether the special measures already available for vulnerable witnesses or victims of specific offences should sit outside the new statutory provisions.
- a default statutory presumption either for the use of live links or against the use of live links and in what circumstances; and
- whether the use of live links was viewed as suitable for juror attendance, during a trial, for appeal hearings or complex matters of law.

78. Following analysis of the 38 detailed responses to the consultation, the Minister determined the following future model for use of live links in courts and tribunals in Northern Ireland should be legislated for.

- An ‘interests of justice’ test will be adopted and accompanied by several requirements operating already.

- A statutory duty will be introduced and placed upon the judiciary that when determining whether the use of live links for that hearing, party, witness or other participant is in the ‘interests of justice’, regard must be had to any guidance issued by senior judiciary for the courts or specific tribunals. The most senior member of the judiciary for the courts is the Lady Chief Justice and for tribunals there are differing titles used including the term President of a specific tribunal.
- The legislation will include a power for the Department to make secondary legislation such as rules or regulations that could specify factors or matters a court should have regard to or take account of in determining the use of live links.
- These new provisions for the wider use of live links by courts and tribunals will not impact upon the current entitlements for vulnerable witnesses or defendants engaged in criminal proceedings. Vulnerable witnesses or victims of crime who are in fear or distress about attending court or vulnerable defendants who satisfy the relevant requirements for eligibility and the statutory test for the use of special measures set out within the Criminal Evidence (Northern Ireland) Order 1999 will continue to provide their evidence under ‘special measures’. Evidence by video link is only one a range of special measures available under that 1999 legislation which will sit apart and be maintained as a separate facility for witnesses or defendants from the provisions for wider use of live links within the courts and tribunals.
- Where there is only one party in a hearing or application and that party is a public official or an employee of a public authority (within the meaning of section 6 of Human Rights Act 1998), there will be a statutory assumption that attendance would be by electronic means unless the court directs, in a specific case/hearing, that attendance remotely would not be ‘in the interests of justice’.
- Whether a person is participating in-person or remotely, the same protection for the solemnity and integrity of proceedings will apply including the prevention of unauthorised recording or transmitting of a live hearing as well as unlawful interruption of that hearing by someone attending remotely.
- Those attending remotely will be subject to the same requirements that their evidence be truthful or be held to account for perjury as would occur had they been present in the courtroom.

Part 6: Administration of Justice

Rehabilitation of Offenders

79. Having analysed the responses to the consultation exercise and drawn upon conviction data and re-offending rates specific to Northern Ireland, the Department developed 4 options for consideration by the Minister. These were:

- Option 1 maintain existing regime;
- Option 2 introduce a version of the current E+W/Scottish arrangements (to allow all sentences of up to 4 years to become spent);
- Option 3 replicate proposed future E+W model (to include sentences of over 4 years, except those for serious violent, sexual or terrorist offences); or
- Option 4 develop a hybrid scheme with a fixed upper limit of up to 10 years for any kind of offence.

80. The Minister, having considered all of the information provided, as presented in the Summary of Responses document, selected Option 4 – the hybrid scheme with a fixed upper limit of a conviction for any offence of up to 10 years imprisonment – as the model to be progressed.

Matters to be included in Criminal Record Certificates

81. The consultation posed eight questions on proposals arising from a Review of the List of Specified Offences to;

- a) update the content of the List to reflect new (and appropriate) offences that have been introduced in the intervening period;
- b) remove offences no longer considered appropriate for inclusion on the List; and
- c) review the List to reflect learning and operational application over the past number of years.

82. The Minister, having considered the responses to the consultation and acted upon drafting solutions offered by the Office of Legislative Counsel, determined that the way forward should consolidate the offences set out in s.113a(6d) of the Police Act into a new Schedule within that Act, to be amendable via the draft affirmative procedure.

83. The Minister also decided to introduce a new clause into the Justice Bill to provide a statutory basis for the new Non-filterable List Committee (a new Committee that will be

created with responsibility to review offences on the list and to bring forward recommendations for their continued inclusion / amendment and for the addition for new offences).

OVERVIEW

Part 1: Biometric Data: Retention etc.

84. The current law in Northern Ireland relating to the retention of DNA and fingerprints under the Police and Criminal Evidence (NI) Order 1989 (PACE NI) has been found in two separate judgments by the European Court of Human Rights (ECtHR) to be in contravention of Article 8 of the European Convention. The first judgment dates back to December 2008 (*Marper*), while the latest judgment was delivered in February 2020 (*Gaughran*).
85. Due to legacy issues, it has not been possible to commence legislation passed by the Northern Ireland Assembly in 2013 in response to the 2008 judgment, meaning that the latest judgment has resulted in elements of this legislation now becoming non-ECHR compliant.
86. The provisions in the Bill will make changes to domestic law which contain the component parts necessary to comply with the findings of the *Gaughran v UK* judgment by:
- 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.

Part 2: Children

87. The Bill 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) through:
- (1) Strengthening the existing presumption of bail for children, introducing unconditional bail as standard and a requirement that any conditions applied should be proportionate and necessary;

- (2) Introducing specific conditions which must be met before a child can be remanded into custody; and
- (3) Underpinning the current administrative arrangements which exist around the separation of children and adults in custodial settings.

88. Paragraph (3) above will be achieved through the replacing of two existing youth-specific custodial orders, which are also location-specific, with a new youth custody and supervision order. The provisions also set out in statute that where a court remands or commits a child to custody, the child must be detained in a child-appropriate location, i.e. a juvenile justice centre.

Part 3: Organised Crime Groups

89. The clauses define what constitutes an organised crime group and set out what it means to 'participate in the criminal activities of an organised crime group'. It also creates two new offences of:

- participating in the criminal activities of an organised crime group; and
- directing the criminal activities of an organised crime group.

Part 4: Other Criminal, Anti-Social and Abusive Behaviour

Advertising Sexual Services

90. The provisions create new offences to criminalise the publication or display of advertisement which promotes, facilitates or offers paid sexual services. They target those who publish or display, cause or allow to be published or displayed, or coerce another person to publish or display, such an advertisement.

Repeal of Public Order Offences

91. The provisions decriminalise rough sleeping and begging in Northern Ireland through the repeal of section 4 of the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847.

Offence of trespass with intent to commit an offence

92. These provisions create a new offence of trespassing with intent to commit a criminal offence and would apply whether or not the person trespassing is (found) to be on the relevant premises.

Offence of facilitating begging for gain

93. These provisions create a new offence to criminalise those who arrange or facilitate another person to beg for gain.

Duty to administer preliminary tests/ Drug Testing at authorised check points /

94. The provisions amend the Road Traffic (Northern Ireland) Order 1995 to provide a duty upon the Police Service of Northern Ireland to administer preliminary tests if a constable reasonably suspects that a person is or has been driving, attempting to drive or is in charge of a motor vehicle, and has committed a traffic offence, or if an accident occurs. It will be an offence for a person to fail to co-operate with such a test.
95. Further, the provisions amend the Road Traffic (Northern Ireland) Order 1995 to enable a constable to require a driver and any person in charge of a motor vehicle to co-operate with a check-point drugs test, at an authorised Police Service of Northern Ireland checkpoint. It will be an offence for a person to fail to co-operate with such a test, without reasonable excuse. A constable may arrest a person without warrant in connection with the check-point drugs test. A constable may also require a person to provide a specimen for analysis

Seizure of motor vehicles causing alarm, distress or annoyance

96. The provisions will remove the current requirement under Article 65 of the Criminal Justice (Northern Ireland) Order 2008 for Police Service of Northern Ireland officers to provide a warning prior to seizing a motor vehicle if it is being used in a manner which contravenes Article 12 or 48 of the Road Traffic (Northern Ireland) Order 1995 or is causing alarm, distress or annoyance to members of the public.

Domestic abuse involving threats or harm to animals

97. These provisions seek to strengthen existing domestic abuse legislation by enhancing protections for victims of domestic abuse by preventing anyone from perpetuating abuse by harming or threatening to harm a pet or animal.
98. Provisions make changes to the Family Homes and Domestic Violence (Northern Ireland) Order 1998 to require the court, when considering whether, and if so how, to make an Occupation Order or Non-Molestation Order, to have regard to the likely effect of any such order or decision on the welfare of an animal cared for by the person whom the Order is intended to protect or by their child.
99. The provisions also make changes to the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 to explicitly identify harm or threats of harm to animals as a form of domestic abuse and to enable any regulations made under Section 27 of the 2021 Act in relation to protective measures for victims of domestic abuse (including protection notices and orders) to provide powers for the court to include such requirements in relation to animals, as it considers relevant, in a protection order.

Abolition of offences of blasphemy and blasphemous libel

100. These provisions abolish the common law offences of blasphemy and blasphemous libel.

Part 5: Use of Live Links

Police Detention and Interviews

101. These provisions will enable video-conferencing technology referred to as ‘live links’ to be used by police for a number of custody functions. These functions include the extension of detention by both police and the courts, and police interviews with a suspect. It also amends the Police and Criminal Evidence (NI) Order 1989 (PACE NI) to replace any references to ‘video-conferencing’ with the term ‘live link’. This will ensure the continuity of terminology throughout PACE NI.

Expanded use of live links by Courts and Tribunals

102. The provisions empowering the judiciary to permit the wider use of live links is part of the outworking of the Vision 2030 Statement by the Northern Ireland Courts and Tribunal Service (NICTS) by allowing for wider digitalisation where it is appropriate so that the justice system can better meet the needs of people now and in the future.

103. These provisions consolidate existing legislative provisions relating to the use of live links dating back to 2003 and build upon those introduced in the Coronavirus Act 2020 that allowed courts and tribunals to address critical business needs, maintain progress on providing access to justice and progression of the recovery of the justice system (a need that depends currently on the continuing ability of the system to use remote hearings, where appropriate, under the 2020 Act live link provisions).

104. The proposed new model is broadly similar in approach to the temporary provisions, as it is based on an ‘interests of justice’ test, but also includes a number of other considerations and safeguards.

Part 6: Administration of Justice

Functions relating to the police

Power to Photograph Certain Persons at a Police Station

105. This provision provides the PSNI with a power to take photographs from a person who has been recalled to a police station, putting photographs on the same footing as fingerprints and DNA in terms of recall powers.

Police Discipline

106. The provisions create a police barred and advisory list for Northern Ireland. The barred list will hold the details of all officers and staff members who have been dismissed from policing after investigations under the relevant disciplinary regulations or process.
107. Similarly, the advisory list will hold the details of individuals who retire or resign while subject of a disciplinary investigation, or who leave before an allegation comes to light.
108. Further, the provisions will enable disciplinary proceedings to be undertaken for police officers who retire/resign while subject of an allegation, and who have been in the interim added to the advisory list, if it is found that the former officer would have been dismissed, were they still serving, they will be removed from the advisory list and added to the barred list.

Police Ombudsman for Northern Ireland

109. The provisions will amend Part VII of the Police (NI) Act 1998 which deals with police complaints in Northern Ireland. The Police Ombudsman is currently prevented from recommending discipline in cases where criminal proceedings are under consideration or have not concluded.
110. The provisions will allow the Ombudsman to submit an early written report to the PSNI where there is incontrovertible evidence to suggest gross misconduct and that it is in the public interest to progress disciplinary proceedings.
111. This will allow for the appropriate authority to consider progress of a fast-track hearing under the Police Conduct Regulations. A referral to fast-track will still require an assessment of whether discipline would prejudice a criminal case.

Delegation of functions of the Policing Board

112. The provisions amend the Police (Northern Ireland) Act 2000 to provide the Northern Ireland Policing Board (NIPB) with the power to delegate certain matters to Board officials. In practice, it is intended to delegate a number of decision-making roles on matters such as pensions forfeiture, ill-health retirement, injury on duty and other miscellaneous benefits.
113. This arrangement was necessary for practical reasons, given the volume of casework involved and the number of decisions required to be made in a timely manner.
114. This power is being sought in response to the judgment in the case of McKee and Others v Charity Commission NI.

Removal of requirement to audit performance plans etc.

115. The provisions amend section 29 of the Police (Northern Ireland) Act 2000, which requires the Comptroller & Auditor General (C&AG) to audit the Policing Board's performance plan and performance review. This amendment is being made following a recommendation by the C&AG and would bring the position in Northern Ireland into line with that in England and Wales.

116. However, the provisions at section 30 would remain in place, should an examination of the Board's compliance with section 28 ever be required.

Criminal proceedings

Consent for prosecution in cases of conspiracy to commit offence outside Northern Ireland

117. This makes amendments to existing legislation relating to conspiracy to commit offences outside Northern Ireland to correct an error in the current provisions. It provides that the consent of the Advocate General for Northern Ireland is required when instituting criminal proceedings in Northern Ireland, as intended.

Death of child or vulnerable adult: limitation of power to "No Bill" alternative charge

118. This proposal amends section 7 of the Domestic Violence, Crime and Victims Act 2004 ("the 2004 Act") to provide that a judge can enter a "No Bill" on a charge such as murder or manslaughter only if the judge also enters a "No Bill" on the related charge under section 5 of the 2004 Act (*causing or allowing a child or vulnerable adult to die*).

Examination in criminal proceedings through intermediary

119. Registered Intermediaries are communication specialists that assist vulnerable persons with communication difficulties to give evidence during the police investigation and at court.

120. The extension of powers relating to the use of Registered Intermediaries will ensure there is provision not only for the giving of evidence at Magistrates' Court and Crown Court (which is currently provided for in the Criminal Evidence (Northern Ireland) Order 1999) but also where there is an appeal from these court tiers to County Court or the Court of Appeal.

121. This will provide vulnerable defendants with communication difficulties with the assistance they need to participate effectively in appeal proceedings as a witness giving oral evidence in court.

Transfer of functions relating to Restorative Justice Schemes

122. These provisions transfer the powers contained in Section 43 of the Justice and Security (Northern Ireland) Act 2007 that govern the ability to add, remove or inspect schemes from a register of organisations formally accredited to deliver restorative justice services from the Secretary of State for Northern Ireland to the Department of Justice.
123. They also enable wider provision of restorative justice services to the criminal justice system by allowing a greater range of non-statutory organisations and independent restorative practitioners to become accredited as part of a new accreditation process along with provision for the registration, inspection and reporting of these services.

Legal aid

Legal Aid charges to be registrable in the statutory charges register

124. The proposal is a technical amendment to Schedule 11 of the Land Registration Act (Northern Ireland) 1970 to include Legal Aid legislation. Schedule 11 allows for the registration of statutory charges in the Statutory Charge Register and so the proposed amendment would allow the Legal Services Agency which administers legal aid in Northern Ireland to register such charges created by the legal aid legislation in the Statutory Charges Register.
125. The purpose of the statutory charge is to ensure that legally-aided persons contribute toward the cost of funding their cases, so far as they are able. It provides LSA with revenue which LSA is allowed to keep and use for funding other future cases.
126. The person who receives legal aid, the assisted person, can become liable for the Statutory Charge should they gain money or property that they did not own before, or they keep money or property that someone has tried to take from them.

Power to require legal aid remuneration to be determined as set out in regulations

127. An amendment is made to the Access to Justice (Northern Ireland) Order 2003 to clarify that any remuneration order made by the Department under Articles 12(3) or 24(3) may include provisions about how any person who determines remuneration may, or must, determine the amount to be paid.

Rehabilitation of Offenders

128. The provisions make amendments to the Rehabilitation of Offenders (Northern Ireland) Order 1978 to reduce rehabilitation periods for existing convictions and to allow more convictions to become capable of becoming spent.

129. The provisions also create an order making power to allow the Department to establish a review mechanism for some additional convictions not captured by the revised arrangements at a future date.

Criminal Record Certificates

Automatic Review of Certain Criminal Record Certificates

130. Provisions in the Bill extend the powers of the Independent Reviewer (IR) of criminal record certificates, under Schedule 8A of the Police Act 1997 (“the 1997 Act”). They extend the scope of the automatic review by the IR to review criminal record information to be disclosed on all criminal record certificates or enhanced criminal record certificates issued under the 1997 Act, where that information relates to any “other disposal” given to a person when they were under 18 years of age.
131. The provisions are required in order to comply with a ruling made by the Supreme Court in January 2019, which determined that blanket disclosure of offences in respect of which such a disposal was given was unlawful.

Matters to be included in Criminal Record Certificates

132. These provisions implement a recommendation arising from the 2023 Review of the List of Specified Offences to streamline arrangements for the maintenance and ease of understanding of the existing list of 1,200+ serious and violent offences that cannot be filtered from AccessNI Standard and Enhanced disclosures.
133. In doing so, these provisions provide clarity on this aspect of the AccessNI Filtering Scheme and replace the current complex legislative provisions with less complicated arrangements.

Court Security

134. The purpose of the policy is to ensure that the exercise of court security officer powers may be extended to other buildings to be specified in regulations. These must be buildings owned or occupied by the Department where a judicial officer or a person exercising judicial or quasi-judicial functions sits.

Day of release from detention

135. This provision is designed to end Friday releases for certain categories of prisoner. It will allow the Northern Ireland Prison Service to bring forward to a Thursday, or in some circumstances to a Wednesday, the release day of those prisoners who receive adult

sentences and who are therefore not subject to post release supervision by the Probation Board for Northern Ireland, when their original date for release falls on a Friday.

136. This provision could also impact the release day of those individuals who currently have that day brought forward to a Friday when their original release day falls on a Saturday, a Sunday or a public holiday.

COMMENTARY ON CLAUSES

Part 1: Biometric Data: Retention etc.

Clause 1: Retention of fingerprints and DNA profiles

Clause 1 and Schedules 1 and 2 amend Part 6 of Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI) to insert new **Articles 63B to 63Z2**.

The new provisions set out a revised framework for the retention of DNA and fingerprints taken by police under PACE NI which will collectively implement the judgments by the European Court of Human Rights in the cases of *S and Marper v UK (2008)* and *Gaughran v UK (2020)* which found that the current law insofar as it applied to the retention of DNA and fingerprints in respect of non-convicted and convicted persons was in violation of Article 8 of the European Convention on Human Rights.

New Articles **63B to 63Z2** are inserted by subsection (1) of Clause 1. They lay out a set of rules which will determine how long biometric material may be retained by police for the purposes of the prevention and detection of crime.

The periods of retention will vary depending on the seriousness of the offence; criminal history; and the age of a person at the time of an offence.

Article **63T** makes provision to enable the Chief Constable to apply to a district judge (magistrates' courts) in specific circumstances to retain material beyond the allocated destruction date. In Article **63U** there is a requirement for the Chief Constable to review material retained for ongoing investigations and in Article **63V** a requirement for the Department to make regulations to set out a review process for long term retained material.

Articles **63W to 63Y** set out the rules for the destruction of copies of material and of samples, and for the use of material.

Article **63Z** sets out the exclusions from the regime.

Articles **63Z1** and **63Z2** set out the details for the appointment and functions of the Northern Ireland Commissioner for the Retention of Biometric Material.

The effect of the changes is detailed below, with reference to the new Article numbers.

Article 63B – Destruction of fingerprints and DNA profiles: introductory

This Article outlines the material which the new provisions apply to: fingerprints and DNA profiles (collectively referred to as Article 63B material) taken under the powers in Part 6 of PACE NI or taken with consent during the investigation of an offence.

Article 63C – Destruction of fingerprints and DNA profiles: the basic rule

Paragraph (1) sets out the basic rule that Article 63B material must be destroyed unless it can be retained under the various new rules in Article 63D to 63V.

Paragraph (2) requires the Chief Constable to destroy Article 63B material if it appears that the material was taken (or derived) unlawfully or the arrest of the person was unlawful or based on mistaken identity. Paragraph (2) does not apply to material being retained under Article 63F (retention of Article 63B material pending investigation or proceedings).

This means that if Article 63B material is of potential evidential value, the material may be retained until the conclusion of any investigation or associated criminal proceedings and the effect of any illegality would be considered by the court as part of its decision on the admissibility of evidence.

The reason for this is that the destruction requirement could mean that potentially important evidence which had been obtained unlawfully due to some defect in procedure e.g. the taking had been authorised by a sergeant rather than an inspector, could be lost to the courts, when it might well be admissible under the current laws of evidence.

It is preferable in these situations to allow the court to consider the effect of the illegality as part of its decision regarding the admissibility of evidence.

Paragraph (3) allows a search of the fingerprint and DNA databases to be carried out on Article 63B material before its destruction if the Chief Constable considers this to be desirable. A search may be desirable to confirm the identity of an individual, to clarify whether an individual has been previously arrested under a different name, and to indicate a potential match of the person's biometric material to the fingerprints or DNA profile obtained from a crime scene.

Article 63D – Retention of consensual material

This article deals with Article 63B material provided by a person with their consent, for example, during the investigation of a major crime, the senior investigation officer may decide to carry out an intelligence led screen.

This means that the police request a large number of samples who the police think are similar to the person(s) they are looking for, for example people of a certain age or who live in a certain area. These will not be added to the DNA database.

This article also deals with samples taken from people presumed innocent to eliminate themselves from an inquiry. This material may be retained until it has fulfilled the purposes for which it was taken or derived and will not be added to the DNA database.

Article 63E – Retention of non-consensual material: overview and interpretation

This Article provides a general overview of the operation of the new retention framework regarding Article 63B material taken from a person under the powers in Part 6 of PACE NI i.e. non-consensual material.

The purpose of the retention regime is that once biometric material has been taken from an individual following their arrest or a conviction, that material can be kept for as long as the longest retention period associated with that individual, even if the material was not taken for that specific arrest or conviction.

The retention regime operates on an “all or nothing” basis e.g. all the individuals’ fingerprints and DNA profile may be retained until there is no longer a reason to retain any of it.

An individual may be under investigation for more than one offence (either at the same time or at different times) and this rule provides that their fingerprints and DNA can be retained until the end of the latest retention period applying to any offence for which they have been arrested/convicted.

The police will generally take a set of fingerprints at each arrest or following conviction (whichever is most appropriate), this is to confirm the identity of the individual but also because an individual’s fingerprints can change over time (e.g. due to injury). A DNA sample will generally only be taken once, and a profile generated from the sample.

Paragraphs (1) to (3) set out that non-consensual material may only be retained for the circumstances and retention periods set out in Articles 63F to 63V.

Paragraph (4) provides that non-consensual material retained under Articles 63G to 63T must be destroyed on the day after the last retention date.

Paragraph (5) provides that material retained under Article 63F (retention of Article 63B material pending investigation or proceedings) must be destroyed as soon as reasonably practicable but within 28 days beginning with the last retention date. This is to allow time for an acquittal decision at court to be communicated with the PSNI system and the resulting deletion to take place.

Paragraph (6) provides that non-consensual material retained under 63F to 63T may not be retained by virtue of any circumstances that occurs after the last retention date.

Paragraph (8) provides that an order for absolute or conditional discharge is to be treated as a conviction for the purposes of Articles 63F to 63V.

Article 63F – Retention of Article 63B material pending investigation or proceedings

This Article enables non-consensual Article 63B material taken from a person in connection with the investigation(s) of an offence(s) to be retained until the conclusion of the investigation(s) by the police or, where legal proceedings are instituted against a person or any other person for the offence(s), until the conclusion of those proceedings, for example, the point at which charges are dropped or upon the outcome of a prosecution.

Paragraph (2) (as read with paragraph (3)) deals with circumstances where material taken from a person in connection with one offence and the person is arrested for, charged with, or convicted of, an offence other than that in connection with which the material was taken. In such a case, the retention of the material will be governed by the rules applicable to the other offence.

The provisions enable all associated non-consensual material to be retained until the outcome of all pending investigations.

Paragraph (4) makes reference to Article 63U, which sets out the review process to be carried out by the police regarding the retention of non-consensual material retained under Article 63F in long running investigations (over 5 years).

Article 63G – Persons arrested for or charged with a qualifying offence

This Article sets out the retention periods applicable to non-consensual Article 63B material associated with persons arrested for or charged with, but not convicted of, a qualifying offence (other than a terrorism-related qualifying offence or a national security-related qualifying offence).

A qualifying offence is an offence as set out in Article 53A of PACE NI.

Paragraph (2) provides that Article 63G does not apply to persons with a recordable offence count left on the books (Article 63I).

Paragraph (3) provides that Article 63B material from a person charged with a qualifying offence, but not convicted, may be retained for a period of 3 years. The retention period begins on the date the person is charged with the offence.

Paragraphs (4) and (5) provide that material from a person arrested but not charged with a qualifying offence, may be retained for 3 years beginning on the date the person is arrested, but only if prescribed circumstances apply, and the Northern Ireland Commissioner for the Retention of Biometric Material consents to its retention.

An application will only be submitted under this provision if there is no other reason to retain the material e.g. a previous conviction with a retention period remaining.

Paragraph (6) provides that the Commissioner may consent to the retention of material under paragraphs (4) and (5) if an application is made to the Commissioner and it is considered appropriate to retain the material.

Paragraph (7) provides that regulations (to be made by the Department) can set out the procedures to be followed when an application is submitted to the Commissioner.

Paragraph (8) provides that material may continue to be retained until the outcome of the consideration by the Commissioner is known

Paragraph (9) provides interpretation of terms used within the Article including that ‘prescribed’ means prescribed by regulations made by the Department.

Article 63H – Court’s power to extend period under Article 63G

This Article provides the power for a court to extend a retention period for either an individual arrested but not charged with a qualifying offence or an individual charged but not convicted of a qualifying offence.

Paragraphs (2) & (3) provide that the police may apply within the last three months of the 3-year retention period to a district judge (magistrates’ court) for an order extending the retention period of material retained under Article 63G(3) and (4) by an additional two years. The retention period cannot be extended beyond five years in total under this process.

Paragraph (4) provides that the Chief Constable, or a person from whom the material was taken, can appeal to the county court against an extension order, or a refusal to make an order.

Paragraph (6) clarifies that, if the retention period ends before the application is finally determined, the material may continue to be retained until the proceedings are concluded and any period during which an appeal may ordinarily be made has ended.

Article 63I – Persons with recordable offence count left on books

This Article makes provision for the retention of Article 63B material in cases where a Crown Court judge orders that a count on an indictment is to be left on books and is not to be proceeded with unless with the consent of the Court or the Court of Appeal.

Under PACE NI, the retention of DNA and fingerprints is dependent on a prosecutorial outcome, whether it be conviction or no conviction.

A count on indictment which is left on books does not constitute either. Paragraphs (1) to (3) therefore provide that material may be retained, but only if there is no other legal basis for retention, for example, if the person is convicted of a recordable offence in the same proceedings.

Paragraph (4) provides that material may be retained for 3 years if the offence relates to a qualifying offence. The retention period begins on the date on which the Crown Court makes the order.

Paragraph (5) provides that material may be retained for 12 months for a recordable offence other than a qualifying offence. The retention period begins on the date on which the Crown Court makes the order.

Article 63J – Persons convicted of a qualifying offence

This Article provides for the retention of Article 63B material taken from a person (both adults and under 18s) who is convicted of a qualifying offence. (It does not matter whether the material is taken before or after the person is convicted).

The retention period is **75 years** beginning the date on which the person is convicted of the offence.

Article 63K – Persons aged 18 or over convicted of a recordable offence other than qualifying offence

This Article provides for the retention of Article 63B material taken from a person who is convicted of a recordable offence, other than a qualifying offence, and was 18 or over at the time of the offence.

Paragraphs (2) and (3) provide a retention period of **50 years** if the conviction involves a custodial sentence (including a suspended sentence), otherwise a **25 year** retention period will apply. The retention period begins the date on which the person is convicted of the offence.

Paragraph (4) clarifies that ‘custodial sentence’ means:

- a sentence of imprisonment.
- a sentence of detention under Article 13(4)(b), 13A(6), 14(5) or 15A(5) of the Criminal Justice (Northern Ireland) Order 2008.

- a sentence of detention under Article 45(1) or (2) of the Criminal Justice (Children) (Northern Ireland) Order 1998.
- an order under Article 30 of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending the offender to a juvenile justice centre; and
- an order under Article 44A of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending the offender to secure accommodation.

Article 63L – Persons under 18 convicted of recordable offence other than qualifying offence

This Article provides for the retention of Article 63B material taken from a person who is convicted of a recordable offence other than a qualifying offence and was under 18 at the time of the offence.

Paragraph (2) provides that this Article does not apply to a first minor offence (which is dealt with by Article 63M).

Paragraphs (3) and (4) provide that if the conviction results in a custodial sentence (including a suspended sentence) of 5 years or more, a retention period of **50 years** will be applied and that if the conviction results in a non-custodial sentence or a custodial sentence (including a suspended sentence) of less than 5 years, a **25 year** retention period will apply.

The retention period begins the date on which the person is convicted of the offence.

Article 63M – Exception for persons under 18 convicted of first minor offence

This Article provides for the retention of Article 63B material taken from a person who was under 18 at the time of committing the offence and is convicted of a first recordable offence, other than a qualifying offence.

In such cases, the retention period will be determined by whether or not a custodial sentence (including a suspended sentence) is imposed for the offence.

Paragraph (2) provides that a first offence means a person with no previous convictions for a recordable offence, no previous convictions for a recordable offence outside Northern Ireland, no previous cautions (including informed warnings and restorative cautions as per Article 63E(10)) in respect of a recordable offence, and no previous completion of a diversionary youth conference process or a restorative justice process in respect of a recordable offence.

Paragraph (3) provides that Article 63M is only applicable to a single offence i.e. if a person is convicted of another recordable offence in the same proceedings, Article 63M will not apply.

Paragraph (4) provides that where the person is given a custodial sentence of 5 years (including a suspended sentence) or more, a retention period of **50 years** will apply, beginning the date on which the person is convicted.

Paragraph (5) provides that where the person is given a custodial sentence (including a suspended sentence) of less than 5 years, a retention period of **5 years plus the length of the sentence will apply**, beginning the date on which the person is convicted.

Paragraph (6) provides that where paragraph (4) or (5) does not apply (no custodial sentence imposed), a retention period of **5 years** will apply beginning the date on which the person is convicted.

Paragraph (9) provides that, for the purposes of paragraph (5), the length of the sentence in the case of a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 is the period for which the person is detained under the order.

This will apply in the same way in the case of a youth custody and supervision order under Article 38A of the Criminal Justice (Children) (Northern Ireland) Order 1998 (see Clause 12, which inserts provisions relating to youth custody and supervision orders, paragraph 36 of Schedule 4, which amends this paragraph, and Clause 19, the effect of which is to preserve the unamended version of this paragraph in the case of juvenile justice centre orders).

Article 63N – Persons convicted of offence outside Northern Ireland: application of Articles 63J to 63M

This Article provides for the application of the retention periods outlined in Articles 63J to 63M in cases where there is existing Article 63B material and the person concerned has a conviction for an offence outside of Northern Ireland.

Paragraphs (2) to (4) provides that the provisions only apply to offences committed outside of Northern Ireland where that offence would constitute a recordable offence if committed in Northern Ireland.

The retention power does not apply in cases where the conviction elsewhere is for an act which is not an offence in Northern Ireland.

Paragraph (5) provides that where Articles 63J to 63M apply, any reference to a custodial sentence is to be read as a reference to a sentence of imprisonment or other form of detention.

Article 63O – Persons completing restorative justice process

This Article makes provision for the retention of Article 63B material taken from a person who completes a restorative justice process in connection with a recordable offence.

Paragraph (2) provides that a retention period of **75 years** will apply (beginning with the date on which the process is completed) where the person was aged 18 or over at the time of the offence and the offence is a qualifying offence.

Paragraph (3) provides that a retention period of **25 years** will apply (beginning with the date on which the process is completed) where the person was aged 18 or over at the time of the offence and the offence is a recordable offence other than a qualifying offence.

Paragraph (4) provides that a retention period of **5 years** will apply (beginning with the date on which the process is completed) where the person was aged under 18 at the time of the offence.

Paragraph (5) defines when a restorative justice process is deemed to have been completed

Article 63P – Persons under 18 given a caution

This Article makes provision for the retention of Article 63B material regarding a person who has been given a caution (or an informed warning or a restorative caution as per Article 63E(10)) in connection with a recordable offence committed while under the age of 18.

Paragraph (2) provides that the retention period is **5 years** beginning with the date on which the person is given the caution.

For a person over 18 and given a caution, the caution is to be treated in the same way as a conviction as per Article 53B(1)(a) of PACE NI.

Article 63Q – Persons completing diversionary youth conference

This Article makes provision for the retention of Article 63B material taken from a person who completes a diversionary youth conference in connection with a recordable offence.

Paragraph (2) provides that a retention period of **5 years** will apply beginning with the date on which the process or plan is completed.

Paragraph (3) defines when a diversionary youth conference is deemed to have been completed.

Article 63R – Persons given a penalty notice

This Article makes provision for the retention of Article 63B material taken from a person who has been arrested in connection with a recordable offence and has accepted a penalty notice under section 60 of the Justice Act (Northern Ireland) 2011 in connection with an offence.

Paragraph (2) provides that a retention period of **2 years** will apply beginning on the date on which the person was given the penalty notice.

Article 63S – Persons subject to notification requirements

This Article makes provision for the retention of Article 63B material taken from a person who is subject to notification requirements (for example notification requirements under the Sexual Offences Act 2003 to assist police in the management of the risk of harm to the public posed by sex offenders and the prevention of crime).

Article 63S will ensure that material relating to an individual who is subject to a notification order will have their material held until the end of the notification period. Of course, if any of Articles 63F to 63T provide for a later date, the material can be retained until that later date.

Paragraph (2) provides that retention is permitted until the person is no longer subject to notification requirements.

Paragraph (3) sets out the various legislation that contain notification requirements to which Article 63S applies.

Paragraph (4) provides the power for the Department to amend the list of notification requirements outlined in paragraph (3) by regulations.

Article 63T – Courts' power to extend period

This Article provides the power for a court to extend the retention period of Article 63B material being held under Articles 63I to 63S. An example of such an application may be when there are extradition proceedings pending and the biometric material is required to confirm the identity of the person being extradited.

Paragraph (2) provides that the Chief Constable may apply to a district judge (magistrates' court) seeking permission to retain material beyond the initial date assigned for destruction.

Paragraph (3) provides that an extension application cannot be made if a national security determination under paragraph 7 of Schedule 1 to the Protection of Freedoms Act 2012 has been made. The appropriate process regarding the retention of Article 63B material for the purposes of national security is to apply under paragraph 7 of Schedule 1 to the Protection of Freedoms Act 2012.

Paragraphs (4) to (6) sets out the conditions, considerations, and the purposes of retention that the district judge has to examine in deciding whether to make an order.

Paragraph (7) provides that an order granted by a district judge must specify how long the material can be retained for, which should be for not more than 2 years. An order can be varied by a further order to extend retention of the material by not more than 2 years at a time.

Paragraph (8) provides that applications must be made to the court within the last 3 months of either the expiry of the initial retention period or the expiry of the extended retention period stipulated in a previous order.

Paragraph (9) provides that the Chief Constable or a person from whom the material was taken can appeal to the county court against an extension order, or a refusal to make an order.

Paragraph (11) provides that, if the retention period ends before the application is finally determined, the material may continue to be retained until the proceedings are concluded and any period during which an appeal may ordinarily be made has ended.

Article 63U – Review of retention where material retained for investigations

This Article requires the Chief Constable to review the continued need to retain material retained pending investigation of offences (Article 63F).

Paragraph (2) provides that a review must be carried out at least every 5 years.

Paragraphs (3) and (4) sets out the considerations the Chief Constable must make when carrying out a review.

If the Chief Constable upon review decides that material should no longer be retained under Article 63F, all material retained under Article 63F must be destroyed, unless the material can be retained under any other Article.

Paragraphs (5) and (6) give the Department powers to set out in regulations additional factors for consideration by the Chief Constable when carrying out a review.

The regulations may provide that material of a specified description or relating to persons of a specified description must, or must not, be retained following a review.

Paragraph (7) provides that ‘specified’ means specified in the regulations.

Paragraph (8) requires the Department to consult those it considers appropriate before making the regulations.

Article 63V – Review of retention where material retained for long term

This Article requires the Department to make regulations that will require the Chief Constable to conduct reviews of the continued retention of long-term retained material relating to a person.

Paragraph (1) clarifies that ‘long-term retained material’ is as follows:

- Article 63J(2) – persons convicted of a qualifying offence – **75 years** retention.
- Article 63K(2) – persons aged 18 or over and given a custodial sentence (including a suspended sentence) for a non-qualifying offence – **50 years** retention.
- Article 63K(3) – persons aged 18 or over, convicted, and no custodial sentence given for a non-qualifying offence – **25 years** retention.
- Article 63L(3) – persons under 18 and custodial sentence (including a suspended sentence) of 5 years or more given for a non-qualifying offence – **50 years** retention.
- Article 63L(4) – persons under 18 and custodial sentence (including a suspended sentence) of less than 5 years given for a non-qualifying offence – **25 years** retention.
- Article 63M(4) – persons under 18, first minor offence and custodial sentence (including a suspended sentence) of 5 years or more given for a non-qualifying offence – **50 years** retention.

Paragraph (2) requires that the review is to include all material relating to a person that is retained under Articles 63D, 63G to 63R and 63T.

Paragraph (3) sets out what the regulations may make provision for, including when and in what circumstances the review must be carried out, enabling a person to request that a review be conducted, requiring a person (where they have requested a review) to be informed of the outcome of the review, and conferring a right of appeal.

Paragraph (4) provides that the regulations may set out factors that the Chief Constable must, may, or must not consider in conducting a review.

Paragraphs (5) and (6) provide that regulations may provide that material of a specified description or relating to persons of a specified description must, or must not, be retained following a review. ‘Specified’ means specified in the regulations.

Paragraph (7) provides that if a decision is made by the Chief Constable at the review to delete the material, all material relating to that person must be destroyed and the retention period ends when the Chief Constable determines.

Paragraph (8) requires the Department to consult those it consider appropriate before making the regulations.

Article 63W – Destruction of copies

Paragraph (1) provides that if fingerprints are required to be destroyed under Article 63B then any copies must also be destroyed.

Paragraph (2) provides that if a DNA profile is to be destroyed, no copy may be kept except in a form that does not identify the person to whom the profiles relates.

Article 63X – Destruction of samples

This Article requires DNA samples to be destroyed as soon as a DNA profile has been satisfactorily derived from the sample (including the carrying out of the necessary quality and integrity checks), and no later than 6 months from the date on which it was taken (paragraph (2)).

Paragraph (3) provides that any other sample, for example, dental impressions or urine, must also be destroyed within six months of being taken.

Paragraph (4) enables a person's DNA or other sample, which would otherwise fall to be destroyed, to be retained until a DNA profile has been derived from the sample and a speculative search of the relevant database has been carried out

Article 63Y – Use of retained material

Paragraph (1) sets out restrictions on the use of fingerprints, DNA and other samples, and DNA profiles. Such material may only be used for purposes related to the prevention or detection of crime, the investigation of an offence or the conduct of a prosecution, or for identification purposes, including of a deceased person.

Paragraph (2) provides that material which should otherwise have been destroyed in accordance with Articles 63C or 63X must not at any time after it is required to be destroyed, be used against the person to whom the material relates or for the purposes of the investigation of any offence.

Any evidence arising from the impermissible use of such material would therefore be likely to be ruled inadmissible in criminal proceedings.

Article 63Z – Exclusion for certain regimes

This Article provides that Articles 63B to 63Y do not apply to biometric material taken under other legislation containing its own retention provisions.

Paragraphs (1) and (2) includes material taken from terrorist suspects under the Terrorism Act 2000.

Paragraph (3) includes material taken in response to a request from the International Criminal Court for assistance in obtaining evidence of identity.

Paragraph (4) includes material taken from terrorist suspects where a Terrorism Prevention and Investigation Measure notice has been imposed.

Paragraph (5) includes material taken under Schedule 3 of the Counter-Terrorism and Border Security Act 2019.

Paragraph (6) includes material taken under Schedule 6 or 12 of the National Security Act 2003.

Paragraph (7) disapplies the retention regime from any material which is, or may become, disclosable under the Criminal Procedure and Investigations Act 1996 or its associated code of practice.

Paragraphs (8) to (10) excludes biological matter that originates from one person but is recovered from another (e.g. a DNA profile obtained from a sample taken from a rape suspect which is found to relate to the victim), and hard copies of material on case files, in order to ensure that it remains available for examination by defence experts and potentially the Criminal Cases Review Commission, in accordance with the disclosure requirements of the Criminal Procedure and Investigations Act 1996.

Paragraph (11) excludes DNA samples and profiles taken before Article 63B came into operation and which is held in a non-searchable format for the purposes only of forensic processing and analysis

Paragraph (12) includes those whose biometric material is held under immigration powers.

Article 63Z1 – Northern Ireland Commissioner for the Retention of Biometric Material

This Article deals with the appointment and office of the Northern Ireland Commissioner for the Retention of Biometric Material.

Paragraphs (1) and (2) requires the Department to appoint a commissioner. Schedule 2B makes provision about the Commissioner and the exercise of their functions.

Paragraph (3) requires the Commissioner to keep under review the operation of the PACE NI biometric retention framework, including the review process of long-term retained material to be set out in regulations made by the Department.

Paragraph (4) sets out that there will be a role for the Commissioner in keeping under review the development of existing and new biometric technologies, which may be in use, or capable of being used, by the Police Service of Northern Ireland and other law enforcement bodies (e.g. Police Ombudsman for Northern Ireland, National Crime Agency), for the prevention and detection of crime.

Paragraphs (5) and (6) provide that the Commissioner may issue guidance regarding the acquisition, handling, retention, and destruction of biometric material and that any person exercising powers in relation to biometric material, such as the Chief Constable, must have regard to any guidance issued by the Commissioner.

Paragraph (7) refers to the functions of the Commissioner to consider applications under Article 63G for the retention of material from persons arrested for, but not charged with, a qualifying offence, where prescribed circumstances apply.

The provision also provides a sign-post to the power for the Department to make regulations under Article 63V(3)(d) (review of long term retained material), which may confer functions on the Commissioner.

Article 63Z2– Reports by Commissioner

Paragraph (1) places a requirement on the Northern Ireland Commissioner for the Retention of Biometric Material to report to the Department on the carrying out of their functions every 12 months.

Paragraphs (2) and (3) provide that the Commissioner may also make reports at any time to the Department on any matter relating to their functions and that the Department can also require a report on any matter relating to the Commissioner's functions.

Paragraph (4) requires the Department to publish reports made by the Commissioner and lay a copy of them before the Northern Ireland Assembly.

Paragraph (5) enables the Department, after consultation with the Commissioner, to exclude any part of a report from publication if it considers it not to be in the public interest.

Subsection (2) of Clause 1 inserts new Schedule 2B into PACE NI. That new Schedule makes further provision about the Commissioner.

Clause 2: Retention of fingerprints and DNA profiles: amendments

This provision gives effect to Schedule 2. Part 1 of Schedule 2 makes new provision for the retention of biometric material for certain sentencing disposals.

Part 2 of the Schedule makes minor and consequential amendments.

Clause 3: Retention of fingerprints and DNA profiles: supplementary

Paragraph (1) stipulates that the amendments made by Clause 1, Schedule 1 and Schedule 2 do not affect Article 63DA, which was inserted by paragraph 5(3) of Schedule 2 to the Counter-Terrorism and Border Security Act 2019.

This is an excepted provision that covers the retention of Article 63B material from persons arrested for a terrorism-related qualifying offence.

Paragraph (2) makes provision that the new biometric retention framework applies to biometric material taken before and after the commencement of the new provisions, apart from the circumstances set out in paragraphs (3) to (9).

Paragraphs (3) to (5) relate to the particular arrangements for biometric material that was taken with the consent of an individual in connection with the investigation of an offence, before commencement of the new provisions.

Paragraph (4) provides that if the person was not a suspect, the material is to be treated as consensual material and retained in accordance with Article 63D.

Paragraph (5) provides that if the person was a suspect, the biometric material is to be treated as non-consensual material and retained in accordance with new Articles 63F to 63V.

Paragraph (6) provides for a 6-month transitional period regarding the destruction of fingerprints from the day the new biometric retention framework is commenced, to enable the police to resolve any difficulties that may arise with the implementation of the new retention system.

Paragraph (6)(a) provides for a longer 2-year transitional period for the deletion of hard copy fingerprints. This is because the identification and destruction of hard copy fingerprints will be a manual exercise for the police.

Paragraph (7) provides for a 6-month transitional period regarding the destruction of DNA samples and profiles from the day the new biometric retention framework is commenced, to enable the police to resolve any difficulties that may arise with the implementation of the new retention system.

Paragraph (8) provides that applications cannot be made to retain biometric material under Articles 63G(4) to (6), 63H and 63T where the material was taken before commencement and would (but for subsections (6) and (7)) be required to be destroyed in the 6-month or 2-year transitional period.

Paragraph (9) relates to biometric material taken before commencement of the new provisions and which is being retained pending investigation or proceedings (Article 63F). The review requirements at Article 63U(2)(a) are replaced by a requirement to carry out the first review 4 years from the commencement of the new provisions.

Paragraph (10) provides the Department with a regulation making power to make further transitional, transitory or saving provisions, should this be necessary.

Paragraph (11) clarifies that the power created in paragraph (10) includes a provision to modify any of the provision contained within paragraphs (3) to (9).

Clause 4: Retention, use and destruction of photographs

Clause 4 inserts new paragraphs into Article 64A of PACE NI, which require the Department to make regulations regarding the retention, use and destruction of photographs taken under the powers set out in Article 64A of PACE NI.

The Department is required to consult when making regulations using this power.

Regulations can include consequential, supplementary, or incidental provision and to amend existing statutory provisions where necessary.

Any regulations made using this power are subject to the affirmative resolution procedure and should be laid within five years of the Justice Act (Northern Ireland) 2026 receiving Royal Assent.

Part 2: Children

Clause 5: Duties of custody officer after charge

This clause amends Article 39(2A) of the Police and Criminal Evidence (Northern Ireland) Order 1989 by inserting a new sub-paragraph (e), which requires custody officers to take account of additional factors when deciding whether to release a child, either with or without bail. These additional factors replicate those that must be considered by a court under 10H of the Criminal Justice (Children) (Northern Ireland) Order 1998 (to be inserted by clause 7 of the Bill).

Clause 6: Police bail after arrest

This clause amends Article 48 of the Police and Criminal Evidence (Northern Ireland) Order 1989 and inserts a new Article 48ZA after that Article.

Subsections (2) and (3) amend Article 48(3D) and (3F) to insert a fourth ground for attaching conditions to police bail: to prevent a serious threat to public order. Subsection (4) amends that Article to insert a signpost to new Article 48ZA

Subsection (5) inserts new Article 48ZA, which requires custody officers to have regard to certain youth-specific considerations when granting bail to or varying the conditions of bail of a person who appears to be under the age of 18.

These include considerations such as age and maturity and the capacity to understand and comply with conditions of bail.

This replicates the considerations that the court is required to take account of under Article 10H of the Criminal Justice (Children) (Northern Ireland) Order 1998 (to be inserted by clause 7 of the Bill).

Clause 7: Court bail

This clause inserts a new Part 3B into the Criminal Justice (Children) (Northern Ireland) Order 1998. Part 3B comprises Articles **10E** to **10I**, which apply when a court is deciding whether a child accused of an offence is to be released on bail or remanded in custody.

Existing Articles 12 and 13 of that Order ('release on bail' and 'remand in custody') are being repealed as a consequence.

Article 10E places a duty on courts to release on bail a child to whom the Article applies, subject specified exceptions.

Paragraph (1) sets out the duty and includes an exception where the court has a power to refuse bail under Article 10F.

Paragraph (2) states that the Article applies to children arrested for, or charged with, an offence in all court proceedings for that offence, including in relation to the imposition or varying of bail conditions, up to the point of conviction and provides detail on what should be treated as a conviction.

Paragraph (3) sets out further exceptions in cases where a child is already either remanded in custody for a separate offence or is serving a custodial sentence. Paragraphs (4) and (5) set out what may be treated as a conviction for the purpose of paragraph (3)(a).

Paragraph (6) states that nothing in the Article affects any power of a court to release a child without bail or on compassionate grounds.

Paragraph (7) states that the Article is subject to Article 38 of the Magistrates' Courts (Northern Ireland) Order 1981, which deals with bail in the case of treason and related offences.

Article 10F establishes the circumstances under which a court can refuse to release a child on bail.

Paragraph (1) sets out the power to refuse bail, which applies when two conditions are met.

Paragraph (2) sets out the first condition: if the child is convicted of the offence, there must be a strong likelihood of the child being sentenced to a custodial order.

Paragraph (3) sets out the second condition: there must be substantial grounds for believing that it is necessary to remand the child in custody to prevent: committal of further offences;

interfering with witnesses; failure to surrender to custody; or their release would cause a serious threat to public order.

Article 10G sets out rules relating to the imposition, variance and removal of conditions attached to bail decisions.

It allows for conditions to be imposed or varied, but only if they are necessary for specific purposes set out in paragraph (2).

Paragraph (3) states that a court must not impose a condition that is more onerous than necessary for the purpose for which it is imposed.

Paragraph (4) places a duty on courts to remove a condition of bail if it is no longer necessary for a purpose specified in paragraph (2) or is more onerous than is necessary for that purpose.

Paragraph (5) sets out exceptions relating to curfew requirements, electronic monitoring requirements and conditions relating to inquiries into physical or mental conditions. In these cases, paragraphs (3) and (4)(b) continue to apply.

Article 10H introduces a number of considerations which a court must take into account when deciding whether or not to release a child on bail, or impose, vary or remove conditions of bail.

Paragraph (2) sets out the considerations, which include the child's age, maturity and understanding as well as the nature and seriousness of the current offence and any previous offending history.

Article 10I requires that the reasons for decisions relating to the refusal of bail, or the imposition, varying or removal of bail conditions are stated openly in court and that a record of them is kept and can be made available to the child upon request.

Clause 8: Arrest for absconding or breaking conditions of bail

This clause amends Article 6 of the Criminal Justice (Northern Ireland) Order 2003.

Subsection (2) inserts paragraph (3ZA), which requires a constable to consider the seriousness of any breach or likely breach of bail conditions before deciding to arrest a child under existing paragraph (3)(b).

Subsection (2) also inserts new paragraph (3ZB), which applies where a constable decides not to arrest a child under paragraph (3)(b) and requires the constable to make a record of the breach to be provided to the court at the next scheduled hearing.

Clause 9: Considerations relevant to bail: accommodation

Subsection (1) amends Article 39 of the Police and Criminal Evidence (Northern Ireland) Order 1989.

New paragraph (2B) provides that where a custody officer is taking certain decisions regarding the release of a child on bail under that Article, the custody officer may consider the child's accommodation needs but must not refuse bail solely because of the absence of any, or adequate, accommodation.

Subsection (2) amends Article 10H of the Criminal Justice (Children) (Northern Ireland) Order 1998 (to be inserted by clause 7 of the Bill) to include similar provision in respect of a court's power to refuse to release a child on bail under Article 10F of that Order.

Clause 10: Place of detention following sentencing

This clause inserts new Article 46BA into the Criminal Justice (Children) (Northern Ireland) Order 1998.

Paragraph (1) states that where a child is sentenced to imprisonment or detention, that period of detention will be served in a juvenile justice centre and not in any other custodial establishment.

Paragraph (2) makes clear that the rule in paragraph (1) applies while the child remains under the age of 18 and is detained under the relevant sentence.

Paragraph (3) defines "detention" for the purpose of paragraph (1).

Clause 11: Powers to sentence child to detention: amendment

This clause amends existing provision relating to specific custodial sentences to ensure children serving such sentences are always held in a juvenile justice centre, and while restating the current law as to where individuals over the age of 18 can be held.

The existing provisions are Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998, and Articles 13 and 14 of the Criminal Justice (Northern Ireland) Order 2008.

Clause 12: Powers to sentence child to detention: removal

This clause removes certain sentencing powers relating to under 18s.

Subsection (1) amends section 5(1)(a) of the Treatment of Offenders Act (Northern Ireland) 1968 to remove children from the scope of orders of detention in a young offenders centre by raising the lower age limit of that order from 16 to 18 years.

Subsection (2) omits Articles 39 to 44 of the Criminal Justice (Children) (Northern Ireland) Order 1998. Those Articles make provision relating to the current main youth custodial order – the juvenile justice centre order – which is being replaced in its entirety.

Subsection (3) omits section 56 of the Justice (Northern Ireland) Act 2002, which inserts provisions relating to custody care orders to the Criminal Justice (Children) (Northern Ireland) Order 1998.

Those provisions were intended to be introduced for younger children aged 10-13 years but have never been commenced and there are no plans in the future to commence them.

Clause 13: Youth custody and supervision orders

This clause inserts Articles **38A** to **38G** into the Criminal Justice (Children) (Northern Ireland) Order 1998, which make provision relating to youth custody and supervision orders.

Article 38A provides for the making of youth custody and supervision orders.

Paragraphs (1), (2) and (6) set out when a court can sentence a child aged 14 or older to a youth custody and supervision order.

Paragraph (3) specifies that a youth custody and supervision order is a two-part order split between custody and supervision in the community.

Paragraph (4) contains ancillary provision regarding where a person who turns 18 during proceedings should be detained under a youth custody and supervision order.

Paragraph (5) grants the court power to impose a curfew requirement or electronic monitoring requirement during the period of supervision under a youth custody and supervision order.

Article 38B sets out the rules on the duration of youth custody and supervision orders, including the split between custody and supervision periods.

Paragraphs (1) and (2) provide that an order is to have effect for the period specified in it, but will be a minimum of six months in duration, and generally a maximum of two years.

Paragraph (3) sets out exceptions for those aged 16 or over where the maximum can be up to four years, including for specific offences where a statutory minimum exists.

Paragraphs (4) and (5) provide that the split between the custodial and supervision elements of the order will be flexible, but the custodial period cannot be less than three months, nor can it be more than one half of the order.

Paragraphs (6) and (7) provide for the period in detention to be reduced by any period which is a relevant period within the meaning of section 26(2) and (2A) of the Treatment of Offenders Act (Northern Ireland) 1968 (periods of detention prior to conviction).

Article 38C deals with the practicalities of taking a child to a juvenile justice centre when they have been sentenced to a youth custody and supervision order by the court.

Paragraphs (2) and (3) provide for the order to be delivered to the person in charge of the juvenile justice centre.

Paragraphs (4) and (5) provide for a record of the child, including any information that may assist the manager of the centre, to be sent to the managers or the persons in charge of the juvenile justice centre.

Paragraphs (6) to (11) set out related offences and penalties, and powers of the court.

Article 38D sets out how the supervision element of a youth custody and supervision order will operate.

Paragraph (1) sets out who will supervise the offender.

Paragraphs (2) to (4) require that, whilst still in custody, a child is informed about the date they will be released, under whose supervision they will be, and any requirements they will be expected to comply with.

Paragraphs (6) and (7) provide for the making of rules regulating the supervision of offenders under a youth custody and supervision order, which will be subject to negative resolution.

Paragraph (8) provides for the payment of expenses to a person supervising an offender under a youth custody and supervision order.

Article 38E introduces Schedule 1B in the Criminal Justice (Children) (Northern Ireland) Order 1998 (to be inserted by clause 13(3) and Schedule 3), which makes provision for how breaches of the supervision requirements under a youth custody and supervision order should be dealt with.

Article 38F prevents a court from making more than one youth custody and supervision order at any time for two or more associated offences, whether those offences occurred at the same time or on separate occasions.

Article 38G sets out how a court should deal with a situation whereby it intends to impose a custodial sentence on an individual already serving a youth custody and supervision order. In such a case, paragraph (2) requires that the existing order is revoked to ensure only one order

is in force at any one time. This is to make the landscape clearer for the individual being sentenced.

Paragraph (3) requires the court to take account of the period the original order would have remained in force, both the custodial and supervision elements, when determining the duration of the new order to be served.

Paragraph (4) applies where the court decides to make a further youth custody and supervision order and modifies Article 38B so that the court is not restricted by the minimum durations set out in Article 38B(2) and (5), which allows the court appropriate flexibility in making the new order.

Clause 14: Place of detention following remand in custody

This clause inserts new Article 10J into the Criminal Justice (Children) (Northern Ireland) Order 1998, which establishes a rule.

Paragraph (1) provides that where a court remands or commits to custody a child arrested for, charged with or convicted of an offence, the child must be held in a juvenile justice centre.

Paragraph (2) provides that the rule applies while the child remains under the age of 18 and is remanded or detained in custody.

Paragraph (4) sets out an exception for children remanded to customs detention under section 152 of the Criminal Justice Act 1988.

Clause 15: Remand in custody exceeding three months

This clause inserts new Article 10K into the Criminal Justice (Children) (Northern Ireland) Order 1998,

Paragraph (1) provides that the Article applies in circumstances where a court is considering remanding a child in custody with the result that the child will be remanded for a period exceeding three months.

Whilst a court is not prevented from remanding a child so that the total period on remand exceeds three months, paragraph (2) requires the court to take into account the likely sentence the offence(s) would attract and whether the remand time already served would likely exceed any custodial part of a sentence.

Where the court so remands the child, paragraph (3) requires the court to state the reasons for its decision in open court.

Clause 16: Consideration of time spent on remand in custody

This clause inserts new Article 32A into the Criminal Justice (Children)(Northern Ireland) Order 1998, which requires a court to give consideration to the time a child has already spent in custody on remand when deciding on the appropriate sentence upon a finding of guilt.

Clause 17: Place of detention in custody for contempt of court

This clause amends Article 47 of the Criminal Justice (Children) (Northern Ireland) Order 1998 to insert a new paragraph (3).

That paragraph provides that any child who is ordered to be detained in custody for contempt of court in reliance on Article 47(2) is held in a juvenile justice centre.

It covers a circumstance not already dealt with by previous clauses 10 and 14 above.

Clause 18: Removal of powers to remand or commit a child to custody

This clause amends certain powers of the court to remand or commit a child to custody.

Subsection (1) amends sections 2(a)(ii) and (5)(3)(a) of the Treatment of Offenders Act (Northern Ireland) 1968 to ensure a child can no longer be committed to or remanded in a Young Offenders Centre by raising the age applicability of the relevant sections of that Act to 18 years.

Subsection (2) removes Article 31 of the Criminal Justice (Children) (Northern Ireland) Order 1998, which allowed a court to detain a child on remand solely for the purpose of obtaining information about them.

Clause 19: Minor and consequential amendments

This clause introduces Schedule 4, which sets out a number of consequential amendments to existing legislation made necessary by the new provisions.

Part 1 of this new Schedule makes amendments relating to bail, and Part 2 makes amendments relating to sentencing, remand and committal to custody.

Clause 20: Transitional provisions and savings: custody of children

This clause contains transitional provision and savings relating to clauses 10 to 18, clause 19(b) and Part 2 of Schedule 4 (custody on sentencing, remand or committal).

Subsection (1) provides that the amendments made by those provisions apply to a sentence, remand or committal ordered by the court after commencement of those provisions, whether the proceedings began before or after commencement.

Subsection (2) contains an exception relating to the amendments made by clause 12(1) and paragraph 7(3)(a) of Schedule 4, which concern a courts power to order detention in a young offenders centre.

To ensure no child is treated more harshly under the new provisions at the point of commencement, this subsection preserves sentencing options for offences committed pre-commencement. Subsection (6) is related and provides instructions on how to deal with a scenario where a court cannot determine whether the offence was committed before or after commencement.

Subsection (3) preserves the existing law for sentences, remands and committals that were ordered by a court before commencement, but this is subject to the exception in subsection (4).

Subsection (5) modifies the operation of section 5(1) of the Treatment of Offenders Act (Northern Ireland) 1968 to permit children detained subject to orders made under that provision prior to commencement to be detained in a juvenile justice centre.

Part 3: Organised Crime Groups

Clause 21: Organised Crime Groups: Definitions

Clause 21(1) sets out that the following definitions apply for the purposes of Part 3: Organised Crime Groups.

Clause 21(2) defines an “organised crime group” to mean a group that has as its purpose, or as one of its purposes, the carrying on of criminal activities with a view to obtaining (directly or indirectly) any gain or benefit, and the group consists of three or more persons who act or agree to act, together to further that purpose.

Clause 21(3) sets out what it means to participate in the criminal activities of an organised crime group. A person participates in the criminal activities of an organised crime group if the person does an act and knows, or has reasonable cause to suspect, that the act is part of criminal activities of an organised crime group, or the act will facilitate, or is likely to facilitate, an organised crime group to carry on criminal activities.

Clause 21(4) sets out what criminal activities mean, namely, activities that fall within Clause 21(5) or (6).

Clause 21(5) provides that activities are criminal activities if they are carried on in Northern Ireland and they constitute an offence in Northern Ireland punishable on conviction on indictment with imprisonment for a term of 4 years or more.

Clause 21(6) sets out that activities are also criminal activities if they are carried on in a country or territory other than Northern Ireland, they constitute an offence under the law in force of the

country or territory where they are carried on, and they would constitute an offence in Northern Ireland of the kind mentioned in Clause 21(5)(b) if the activities were carried on in Northern Ireland

Clause 21(7) provides the Department of Justice with the power to amend the definition of criminal activities by regulations.

Clause 21(8) sets out the Assembly procedure (*draft affirmative*) for regulations made by the Department of Justice under Clause 21(7).

Clause 22: Participating in the Criminal Activities of an Organised Crime Group

Clause 22(1) creates a new offence of participating in the criminal activities of an organised crime group.

Clause 22(2) provides that for a person to be guilty of an offence, it is not necessary for any criminal activities capable of being facilitated by the person's act to be carried on, for the person to know any of the persons who are members of the organised crime group, or for all of the acts or omissions comprising participation in the group's criminal activities to be carried on in Northern Ireland (provided that at least one of them is).

Clause 22(3) sets out that the penalty for an offence under Clause 22 is conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine or to both.

Clause 23: Directing the Criminal Activities of an Organised Crime Group

Clause 23(1) creates a new offence of directing the criminal activities of an organised crime group.

Clause 23(2) sets out that a person directs the criminal activities of an organised crime group if the person participates in the criminal activities of an organised crime group, and does so by directing criminal activities of the group, at any level.

Clause 23(3) sets out that directing criminal activities of an organised crime group includes instructing one or more persons to participate in the criminal activities of an organised crime group and controlling one or more persons participating in the criminal activities of an organised crime group.

Clause 23(4) provides that 'instructing' in Clause 23(3)(a) includes threatening another person and any other means of putting pressure on the other person.

Clause 23(5) provides that for a person to be guilty of an offence, it is not necessary for any criminal activities capable of being directed by the person's act to be carried on, for the person to know any of the persons who are members of the organised crime group, or for all of the

acts or omissions comprising participation in the group's criminal activities to be carried on in Northern Ireland (provided that at least one of them is).

Clause 23(6) sets out that the penalty for an offence under Clause 23 is conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine or to both.

Clause 24: Organised Crime Groups: Amendments

Clause 24 gives effect to Schedule 5.

Part 4: Other Criminal, Anti-Social and Abusive Behaviour

Clause 25: Advertising sexual services

Clause 25 inserts new Article 64(B) into the Sexual Offences (Northern Ireland) Order 2008.

Article 64B(1) provides that it is an offence where a person (A):

- publishes or displays, or causes or allows to be published or displayed, including digitally, an advertisement whose purpose is to promote, facilitate or offer sexual services provided by another person (B) in exchange for payment; or
- coerces another person (B) to publish or display, including digitally, an advertisement whose purpose is to promote, facilitate or offer B's sexual services in exchange for payment; and
- (A) knows, or ought reasonably to know, that the advertisement has that purpose.

Article 64B(2) provides that the offence under Article 64(B)(1) is committed regardless of whether (A) secures personal financial gain, or personally benefits in any way, from publishing or displaying the advertisement, or causing or allowing it to be displayed or published.

Article 64B(3) provides that a person convicted of an offence under Article 64B(1) is liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Article 64B(4) provides that for the purposes of the offence, "sexual services" has the same meaning as in Article 64A(4A) and (4B) of the Sexual Offences (Northern Ireland) Order 2008.

Clause 26: Repeal of Public Order Offences

Clause 26(1) repeals Section 4 of the Vagrancy Act 1824, which criminalises rough sleeping.

Clause 26(2) repeals the Vagrancy (Ireland) Act 1847, which criminalises begging.

Clause 26(3) gives effect to **Schedule 6**, which provides for amendments consequential upon the clauses immediately above.

Clause 26(4) contains a savings provision – all the amendment made by clauses 26(1) and 26(2) above do not apply in relation to an offence committed before this section comes into operation

Clause 27: Offence of trespass with intent to commit a crime

Clause 27 provides for a new offence of trespassing with intent to commit a criminal offence.

Clause 27(1) provides that a person commits an offence where they trespass on any premises to commit an offence and whether or not they are on that premises, the intent relates to the premises on which the person is trespassing.

Clause 27(2) provides that, for the purposes of the offence ‘premises’ means any building, part of a building, or enclosed area.

Clause 27(3) provides that a person convicted of an offence under **clause 27(1)** is liable, on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding level three, on the standard scale (or both).

Clause 28: Offence of facilitating begging for gain

Clause 28 provides for a new offence of arranging or facilitating begging for gain.

Clause 28(1) provides that a person commits an offence where, for gain, that person arranges or facilitates another person to beg.

Clause 28(2) provides that a person convicted of an offence under **clause 28(1)** of arranging or facilitating begging for gain is liable, on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding level five on the standard scale (or both).

Clause 29: Duty to administer preliminary tests

Clause 29 amends Article 17 of the Road Traffic (Northern Ireland) Order 1995 to maintain the current position whereby a police officer may require a person to co-operate with a preliminary test for alcohol or drugs if the police officer reasonably suspects that the person is or has been driving, attempting to drive or is in charge of a motor vehicle on a road or other public place and has alcohol or a drug in his body or is under the influence of a drug.

Further, at present, a police officer may require a person to co-operate with a preliminary test if the officer reasonably suspects that the person is or has been driving, attempting to drive or is in charge of a motor vehicle on a road or other public place and has committed a road traffic offence or an accident occurs.

Clause 29 further amends Article 17 of the 1995 Order to change the power for a police officer to require co-operation with a preliminary test, to a duty for the police officer to require co-operation with such a test where a road traffic offence or an accident occurs. It remains an offence for a person to fail to co-operate with a preliminary test.

Clause 30: Drugs testing at authorised checkpoints

Clause 30(1) and (2) amend Article 13 of the Road Traffic (Northern Ireland) Order 1995 (“the 1995 Order”) to provide that a person is deemed not to co-operate with a check-point drugs test unless they provide a sufficient specimen.

Clause 30(3) inserts a new Article 17CB of the 1995 Order.

New Article 17CB(1) provides a power for an on-duty police officer at a check-point to require the driver of a vehicle and any person in charge of a vehicle to co-operate with a check-point drugs test.

New Article 17CB(2) defines a check-point drugs test as a procedure whereby a specimen of saliva is obtained from the person to whom the test is administered for the purpose of obtaining, by means of a device approved by the Department for Infrastructure, an indication whether that person to whom the test is administered has a drug in their body.

New Article 17CB(3) and (4) provide that a check-point drugs test must be authorised by a member of the Police Service of Northern Ireland, not below the rank of inspector; and a check-point drugs test may be authorised to be established in any public place. Such authorisation must be in writing and specify the public place, day(s) and hours of the operation of the check-point.

New Article 17CB(5) provides that a check-point drugs test may be administered only at or near the check-point; and only by a uniformed police officer.

New Article 17CB(6) makes it an offence for a person to fail to co-operate with a check-point drugs test without reasonable excuse.

Clause 30(4) amends existing Article 17D of the 1995 Order.

Article 17D currently provides for a police officer to arrest a person if they reasonably suspect that a preliminary breath test is failed. Article 17D is amended to extend this power to a check-point drugs test.

Clause 30(5) inserts new Article 18(1B) of the 1995 Order.

New Article 18(1B) provides for a police officer to require a person to provide a specimen of blood or urine for a laboratory drugs test, in order to investigate whether that person has failed a check-point drugs test.

Clause 31: Seizure of motor vehicles used in a manner causing alarm, distress or annoyance

Clause 31(1) amends Article 65 of the Criminal Justice (Northern Ireland) Order 2008 (“the 2008 Order”) to omit paragraphs (4) and (5). Article 65 of the 2008 Order currently sets out powers for a uniformed police constable - if they have reasonable grounds for believing that a motor vehicle is being driven carelessly or inconsiderately or should not be being operated on the road, and the driving is likely to cause alarm, distress or annoyance to the public - to stop a moving motor vehicle, seize and remove the motor vehicle, enter premises to exercise those powers, and use reasonable force if necessary to exercise those powers.

Article 65(4) requires that a constable shall not seize a motor vehicle unless they first give a warning to the user that they will seize it if the use continues, and that warning is ignored.

Article 65(5) outlines the exceptions to the need to provide a warning.

The effect of the amendment in omitting paragraphs (4) and (5) is to remove the current requirement under Article 65 of the 2008 Order for Police Service of Northern Ireland officers to provide a warning prior to seizing a motor vehicle if it is being used in a manner which contravenes Article 12 or 48 of the Road Traffic (Northern Ireland) Order 1995 or is causing alarm, distress or annoyance to members of the public

Clause 31(2) clarifies that this amendment does not have retrospective effect.

Domestic abuse involving threats or harm to animals

Clause 32: Family Homes and Domestic Violence (Northern Ireland) Order 1998

Clause 32(1) provides for the amendment of the Family Homes and Domestic Violence (Northern Ireland) Order 1998.

Clause 32(2) amends Article 2 (interpretation) of the 1998 Order to define ‘animal’ for the purposes of the Order and to specify that, for the purposes of Articles 11(6)(c), 13(6)(c), 14(6)(c) and 20(1)(c), an animal is cared for by a person if that person participates or has participated in meeting any of the animal’s needs as set out in section 9(2) of the Welfare of Animals Act (Northern Ireland) 2011, whether on a permanent or temporary basis.

Clause 32(3) and (4) amends Article 11(6)(c) of the 1998 Order to require the court, when considering whether and, if so, how to make an occupation order under Article 11, to have regard to the likely effect of any such order or decision on the welfare of an animal cared for by the person whom the Order is intended to protect or by a relevant child, under the legislation.

Clause 32(4) amends Article 13(6)(c) to require the court, when considering whether and, if so, how to make an order under Article 13, to have regard to the likely effect of any such order or decision on the welfare of an animal cared for by the person whom the Order is intended to protect or by a relevant child, under the legislation.

Clause 32(5) amends Article 14(6)(c) to require the court, when considering whether and, if so, how to make an order under Article 14, to have regard to the likely effect of any such order or decision on the welfare of an animal cared for by the person whom the Order is intended to protect or by a relevant child, under the legislation.

Clause 32(6) amends Article 20(1) to provide an explicit power for courts, in making a non-molestation order under Article 20, to include provision prohibiting the respondent from harming, threatening or interfering with any animal that is owned or cared for by the applicant, a relevant child or, the person for whose benefit the order would be made

Clause 33: Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021

Clause 33(1) provides for amendments to the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.

Clause 33(2) amends section 2 of the 2021 Act to specify that threatening or harmful behaviour that is directed at or in relation to an animal owned or cared for by the victim or their child amounts to abusive behaviour under that section. Clause 33(2)(b) inserts a definition of what is meant by ‘an animal cared for by a person’ for the purposes of this provision.

Clause 33(3) amends Section 27(6)(d) to provide an enabling power for the Department, when bringing regulations in relation to protective measures for victims of abuse under section 27, to include provisions allowing notices to impose requirements relating to any animal cared for the person whom the notice is intended to protect, or by their child.

Clause 33(4) seeks to insert subsection 14A to Section 27 to define what is meant by ‘an animal cared for by a person’ for the purposes of this provision

Clause 34: Abolition of offences of blasphemy and blasphemous libel

Clause 34 provides for the abolition of the common law offences of blasphemy and blasphemous libel.

Part 5: Use of Live Links

Police Detention and Interviews

Clause 35: Interviews

This clause amends Article 40 of PACE NI, which concerns the responsibilities of the police to persons detained under PACE NI. Article 40 requires that all detainees are treated in accordance with PACE NI and the relevant codes of practice and that, where required, records must be made in relation to the detained person on their custody record. The aim of these amendments is to enable remote interviewing using live link so that a police officer can interview a suspect from a different location.

The clause also permits a custody officer to transfer physical custody of a detained person to an officer who is not involved in the investigation and whose responsibility would be to facilitate the live link interview with the investigating officer.

Article 40(3) of PACE NI places a duty on the investigating officer, in whose custody the detainee is, to report to the custody officer how Article 40 of PACE NI and the codes of practice were adhered to upon return of the individual to the custody officer.

The new clause imposes the same responsibilities regarding the treatment of the detainee on the interviewing officer on the other end of the live link.

Clause 36: Detention

This clause amends Part 5 of PACE NI by inserting new Articles 46ZA (functions of extending detention: use of live links) and 46ZB (warrants for further detention: use of live links), which make provision for the use of video conferencing technology, termed 'live link', in connection with the authorisation of extensions of pre-charge detention.

Article 46ZA(7) disapplies the Article 59 right to legal advice on the basis that the detained person will have exercised their right to legal advice as a precondition for the use of the live link.

Clause 37: Review of use of live links

Clause 37 requires the Department to appoint a person or body to carry out a review of the use of live links arrangements under Articles 40(3A) to (3E), 46ZA and 46ZB of PACE NI (interviews and extension and further detention functions).

The review is to be carried out within 3 years of the provisions coming into operation and a report is to be prepared, covering matters specified in paragraphs (2) and after consultation as set out in paragraph (3), laid before the Assembly and published by the Department.

Expanded use of live links in Courts and Tribunals

Clause 38 - Directions for participation by live link

Clause 38(1) provides a permissive power in any proceedings before a court or statutory tribunal for the court or tribunal who may give a live link direction for any person's participation in proceedings.

Clause 38(2) provides that a live link direction permits or requires (requires only where the court or tribunal has power to compel participation) the person to participate in the proceedings through a live link.

Clause 38(3) defines participation as including, in particular, a list of participants – the list is non exhaustive.

Clause 38(4) provides that a live link direction may not be given for a person's participation in proceedings as a member of a jury.

Clause 38(5) signposts to further provisions about the effect of a live link direction (clause 41) and for provision about the making, varying and rescinding of a live link direction (clause 42, 43 and 44)

Clause 39 - Enabling the public to see and hear proceedings: limited transmission

Clause 39(1) provides that where there are proceedings before a court or statutory tribunal, and, the court or tribunal considers it appropriate to do so in order to enable persons who are not taking part in the proceedings to see and hear, or solely to hear, the proceedings the court or tribunal may make a limited transmission direction.

Clause 39(2) provides that a limited transmission direction is a direction that images and sounds of the proceedings, or sounds of them, are to be transmitted to specified live stream premises, or, broadcast by a transmission to which individuals are given access only having first identified themselves to the court (or to a person acting on behalf of the court).

Clause 39(3) defines specified live streaming premises above as any premises, suitable for the purpose of enabling members of the public to watch or listen to the proceedings that are specified in the direction.

Clause 39(4) provides that a limited transmission direction may include further provision about the manner of transmission, or the persons able to watch or listen including provision making that ability subject to conditions aimed at preventing persons whom the court or tribunal intends should not watch or listen from being able to do so.

Clause 39(5) provides that a limited transmission direction may relate to the whole or to part of the proceedings concerned.

Clause 39(6) signposts to further provisions about the giving, varying and rescinding of a limited transmission direction (clauses 42 and 44).

Clause 40: Enabling the public to see and hear proceedings: broadcast

Clause 40(1) provides that a broadcast direction may be given if proceedings before the court or tribunal are to be conducted wholly as video proceedings, or wholly as audio proceedings, and the court or tribunal considers that (whether because the public gallery in the courtroom is closed or otherwise unavailable, or for any other reason) the giving of the direction is necessary to ensure that there is a public hearing.

Clause 40(2) provides that if proceedings are to be conducted wholly as video proceedings, the court or tribunal may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to see and hear the proceedings.

Clause 40(3) provides that if proceedings are to be conducted wholly as audio proceedings, the court or tribunal may direct that the proceedings are to be broadcast (in the manner specified in the direction) for the purpose of enabling members of the public to hear the proceedings.

Clause 40(4) defines, for the purposes of this section, that proceedings are conducted wholly as video, or wholly as audio proceedings if - directions have been given, under this Chapter or any other provision, for all the persons taking part in the proceedings to do so through a live video link or a live audio link (as the case may be), and all those persons take part in the proceedings in accordance with those directions – this is subject to clause 40(5) below –

Clause 40(5) provides an exception to clause 40(4) by confirming the presence of any of the following persons at the same location does not prevent the proceedings from being conducted “wholly” as video or audio proceedings—(a) the judge and any other member of the court or tribunal; (b) the clerk to, and any other member of staff of, the court or tribunal.

Clause 40(6) provides that a broadcast direction may relate to the whole or to part of the proceedings.

Clause 40(7) signposts to further provisions about the giving, varying or rescinding of a broadcast direction (clause 42 and 44).

Clause 41: Effect of live link direction

Clause 41(1) provides that where a court is sitting with a jury and a person gives evidence in accordance with a live link direction, the judge or coroner may give the jury such direction as

the judge or coroner thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given in person.

Clause 41(2) provides that where a person gives evidence in pursuance of a live link direction from a location outside NI, and in that evidence makes a statement on oath, the statement is to be treated as having been made in Northern Ireland (and Article 3 of the Perjury (Northern Ireland) Order 1979 applies accordingly).

Clause 41(3) provides that (4) and (5), immediately below apply where a person who is being held in custody or detained in hospital (“P”) is participating in proceedings before a court, in accordance with a live link direction, where it falls to the court to determine whether P should continue to be held in custody or detained in hospital and during the hearing it appears to the court that P is not able to see and hear the court or that P cannot be seen and heard by it, and the lack of ability to see and hear the court or be seen and heard by the court cannot be immediately corrected.

Clause 41(4) and (5) provides that If the court is satisfied that it is not reasonably practicable to bring P to the court before P ceases to be held in custody or detained in hospital, then, the court may proceed with the hearing, and if it does so, it may not remand P in custody, or order that P be detained in hospital, for a period exceeding 8 days commencing on the day following the remand or order for detention. In any other case, the court must adjourn the hearing.

Clause 41(6) defines “a person held in custody” and “a person being held detained in hospital” for the purposes of this section.

Clause 42 - Giving a direction under this Chapter

Clause 42(1) provides that this section applies to a live link direction for participation of a person (P), a limited transmission direction and a broadcast direction.

Clause 42(2) provides that a court or tribunal may make any such direction either of its own motion, or, on the application of a party to the proceedings, or, in the case of a live link direction only, on the application of (P).

Clause 42(3) provides that before giving a direction the court or tribunal must consider the views of the parties to the proceedings, and, in the case of a live link direction, the views of P.

Clause 42(4) provides that in deciding whether to give any direction, the court or tribunal must have regard to all the circumstances of the case including in particular:- in the case of a court any guidance issued by the LCJ or the Presiding Coroner (as the case may be); in the case of an industrial tribunal or the Fair Employment Tribunal any guidance issued by the President of the Industrial Tribunals and the Fair Employment Tribunal; and any matters set out for this purpose in regulations made by the DOJ (for which Clause 42(8) provides that the draft affirmative procedure will apply).

Clause 42(5) provides that a court or tribunal must not give a direction unless it is satisfied that it is in the interests of justice to do so (but, in the case of a live link direction, also signposts to clause 43.

Clause 42(6) provides if the court or tribunal gives a direction, it may also direct that a recording of the proceedings (or of any transmission or broadcast of the proceedings) is to be made, in the manner specified in the direction, for the purpose of enabling the court to keep a record of the proceedings.

Clause 42(7) provides that where a court or tribunal refuses an application for a direction it must state openly its reasons for doing so, and, if it is a magistrates' court, cause the reasons to be entered in the Order book.

Clause 42(8) provides the Assembly procedure should the Department make regulations under subsection (4)(b), the regulations cannot be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

Clause 42(9) provides that the power of a court or tribunal to give any one of the directions mentioned in subsection (1) is additional to, and does not limit, any other power of the court or tribunal.

Clause 43 - Presumption of giving evidence by live link in certain cases

Clause 43(1) provides for a statutory presumption in favour of a live link direction, unless the court or tribunal is satisfied it would be contrary to the interest of justice to do so, where the participant is a public authority, or an officer or representative acting on behalf of a public authority, and the proceedings are single-participant proceedings (see subsection (2)), or (b) the participant is an expert witness of a class or description specified for the purposes of this paragraph (see subsection (4)).

Clause 43(2) defines "public authority" (as any person listed in Schedule 6 and "single participant proceedings" for the purposes of (1) above.

Clause 43(3) provides a delegated power the Department to amend by regulations the list of "public authorities" listed within Schedule 6 for the purposes of subsection (1)(a) above.

Clause 43(4) provides a delegated power for the Department to specify by regulations classes or descriptions of expert witnesses for the purposes of subsection (1)(b) above.

Clause 43(5) provides the Assembly procedure to apply for the regulations at (3) and (4) above is the draft affirmative procedure.

Clause 44 - Varying or rescinding a direction under this Chapter

Clause 44(1) provides that this section applies to a live link direction, a limited transmission direction and a broadcast direction.

Clause 44(2) provides that a court or tribunal may vary or rescind a direction if it appears to the court or tribunal to be in the interest of justice to do so.

Clause 44(3) provides that a court or tribunal may vary or rescind either of its own motion, on the application of a party, or in the case of a live link direction, on the application of (P).

Clause 44(4) provides that an application by a party or by P to rescind or vary may not be made unless there has been a material change of circumstances.

Clause 44(5) provides that before varying or rescinding the court must consider the views of the parties and, in the case of a live link direction, the views of (P).

Clause 44(6) provides that where a court or tribunal varies or rescinds, or, refuses an application to do so, it must state openly its reasons for that decision and if it is a magistrates' court have those reasons entered in the Order Book.

Clause 45 - Offences in relation to participation through live link

Clause 45(1) provides that it is an offence for a person to make an unauthorised recording or transmission of an image or sound which is being transmitted through a live link.

Clause 45(2) provides that it is an offence for any person to make an unauthorised recording or transmission of an image or sound made by a person participating in court or tribunal proceedings through a live link.

Clause 45(3) defines unauthorised for the purposes of this clause - unless authorised by the court or tribunal in which the proceedings are conducted.

Clause 45(4) provides that it does not matter whether the person making a recording or transmission intends the recording or transmission, or any part of it, to be seen or heard by any other person.

Clause 45(5) provides for anyone charged with an offence under this clause a defence which requires that the person prove that at the time of the recording or transmission, the person did not know and could not reasonably have known either that the image or sound was being transmitted through a live link (for clause 45(1) live link offence only) or, that the image was of or the sound was made by, a person while participating in court or tribunal proceedings through a live link (for clause 45(2) offence only).

Clause 45(6) provides that a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Clause 46 - Offences in relation to limited transmission or broadcasting

Clause 46(1) provides that it is an offence for a person to make an unauthorised recording or transmission of an image or sound which is being transmitted or broadcast in accordance with a limited transmission direction or a broadcast direction.

Clause 46(2) provides that it is an offence for any person to make an unauthorised recording or transmission of an image or sound made by a person viewing or listening to a transmission made in accordance with a limited transmission direction.

Clause 46(3) defines unauthorised for the purposes of this clause - unless authorised by a limited transmission direction or a broadcast direction, or, authorised by the court or tribunal in which the proceedings are conducted.

Clause 46(4) provides that it does not matter whether the person making a recording or transmission intends that to be seen or heard by any other person.

Clause 46(5) provides for anyone charged with an offence under this clause a defence which requires that the person prove that at the time of the recording or transmission of the image or sound concerned, the person - was not in specified live-streaming premises, and (b) did not know, and could not reasonably have known -

- (i) in case of an image or sound within subsection (1), that the image or sound was being transmitted or broadcast in accordance with a limited transmission direction or a broadcast direction, or
- (ii) in case of an image or sound within subsection (2), that the image was of, or the sound was made by, a person while viewing or listening to a transmission made in accordance with a limited transmission direction.

Clause 46(6) provides that a person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Clause 46(7) defines specified live streaming premises as having the same meaning as in clause 42 above.

Clause 47 - Meaning of “live link” for the purposes of this Chapter

Clause 47(1) defines for this Chapter “live link” which means a live video link or a live audio link.

Clause 47(2) provides a “live video link”, in relation to a person (“P”) participating in proceedings, is a live television link or other arrangement which enables P to see and hear all other persons taking part in the proceedings who are not in the same location as P, and where P is a person mentioned in clause 38(3)(a) to (f), enables all other persons who are taking part in the proceedings but are not in the same location as P, or who are attending the proceedings, to see and hear P.

Clause 47(3) provides a “live audio link”, in relation to a person (“P”) participating in proceedings, is a live telephone link or other arrangement which enables P to hear all other persons taking part in the proceedings who are not in the same location as P, and where P is a person mentioned in clause 38(3)(a) to (f), enables all other persons who are taking part in the proceedings but are not in the same location as P, or who are attending the proceedings, to hear P.

Clause 47(4) provides that the references in subsections (2) and (3) to persons taking part in proceedings are to any person mentioned in clause 38(3)(a) to (f), and where the court is sitting with a jury, any member of the jury.

Clause 47(5) provides that the references in subsections (2)(b) and (3)(b) to persons attending the proceedings are to any other person participating in the proceedings by virtue of a live link, and, any person present in the courtroom or other room (if any) in which a hearing of the proceedings is being held.

Clause 47(6) provides where a court or tribunal gives a live link direction, and has power to order or direct that measures be taken that prevent a participant in the proceedings from seeing and hearing, or from being seen and heard by, any other person, the references in subsections (2) and (3) to enabling a person to see and hear, or to be seen and heard by, other persons are to be read as being subject to that power.

Clause 47(7) provides that the extent (if any) to which a person is unable to hear or see by reason of any impairment of hearing or eyesight is to be disregarded for the purposes of subsections (2) and (3).

Clause 48 - Other definitions

Clause 48(1) provides that this section has effect for the purposes of this Chapter.

Clause 48(2) defines “Court” which means the Court of Appeal, the High Court, the Crown Court, a county court, a magistrates’ court, and a coroner holding an inquest.

Clause 48(3) defines “Statutory tribunal” which means a tribunal (however named or described) established by or under a transferred provision, other than a court.

Clause 48(4) provides, for the purposes of subsection (3) above, a transferred provision is any statutory provision which would, if included in an Act of the Assembly, be within the competence of the Assembly, and would not, if included in a Bill for an Act of the Assembly, result in the Bill requiring the consent of the Secretary of State.

Clause 48(5) defines “Recording” which means a recording on any medium of a single image, a moving image or any sound, or from which a single image, a moving image or any sound may be produced or reproduced.

Clause 48(6) defines “Transmission” which means any transmission by electronic means of a single image, a moving image or any sound.

Clause 48(7) provides that an image or sound is transmitted through a live video link if it is transmitted as part of a person’s participation in court or tribunal proceedings through a live video link, and, is transmitted through a live audio link if it is transmitted as part of a person’s participation in court or tribunal proceedings through a live audio link.

Clause 49 - Consequential amendments and transitional provisions

Clause 49 provides that in **Schedule 8** Part 1 contains amendments and repeals that are consequential on this Part; Part 2 contains transitional provision.

Part 6: Administration of Justice:

Functions Relating to the Police

Clause 50: Powers to Photograph Certain Persons at a Police Station

This clause gives effect to **Schedule 9**, which amends Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989 to create powers to photograph certain persons at a police station.

Clause 51: Power to specify date of attendance at police station for fingerprinting etc

This clause amends paragraph 16 of Schedule 2A of the Police and Criminal Evidence (Northern Ireland) Order 1989 to allow the police to specify the date and time (or times) of attendance. This relates to the recall power of the police to require those who have been arrested, charged or convicted to attend a police station so that their fingerprints and DNA samples can be taken (photographs are addressed by Clause 50 above). The police will be allowed to specify a set time and date or a time range on that date which will assist both the individual and the police to have appropriate resources available so that material can be taken.

Clause 52: Disciplinary proceedings concerning former police officers

Clause 52 amends sections 25 and 26 of the Police (Northern Ireland) 1998 (“the 1998 Act”) to provide the DOJ with a Regulation making power to apply procedures in respect of the conduct, efficiency and effectiveness of members of the PSNI or PSNI Reserve to former members.

The Regulations can apply for these procedures to apply where –

- An allegation relating to the conduct, efficiency or effectiveness of the person comes to the attention of the Chief Constable, the Board or the Ombudsman,
- At the time of the alleged misconduct, inefficiency or ineffectiveness the person was a member of the PSNI (or the reserve), and
- Condition A, B or C is met.

Condition A is that the person ceased to be a member of the PSNI after the allegation was brought to the attention of the Chief Constable, the Board or the Ombudsman.

Condition B is that the period between the person having ceased to be a member of the PSNI and the allegation coming to attention does not exceed the period specified in the Regulations.

Condition C is that the person had ceased to be a member of the PSNI before the allegation came to light; the period between the person having ceased to be a member and the allegation coming to the attention of the relevant authority exceeds the period specified in Regulations; and the alleged behaviour if proved may have been dealt with by dismissal if the individual was still a serving officer.

The clause makes a number of consequential amendments to other sections of the 1998 Act.

Paragraph (8) provides that the Regulations may not make provision in relation to a person who ceases to be a police officer before the coming into operation of these provisions.

It also provides that Regulations may make provision in relation to a person who ceases to be a police officer after the coming into operation of this section even through the alleged misconduct, inefficiency or ineffectiveness occurred at a time before the coming into operation of these provisions.

But this is only if the alleged behaviour is such that, if proved, there could be a finding in relation to the person in disciplinary proceedings that the person would have been dismissed if the person had still been a police officer.

Clause 53: Police barred list and police advisory list

Clause 53 gives effect to Schedule 10, which inserts a new Part 7A into the Police (Northern Ireland) Act 1998 (“the 1998 Act”).

New Part 7A makes provision for police barred lists and police advisory lists.

Clause 54: Police Ombudsman: power to submit a report to appropriate authority during investigation.

Clause 54 amends Section 56 of the Police (Northern Ireland) Act 1998 to allow the Police Ombudsman for Northern Ireland to submit a written report to the Appropriate Authority at any stage during their investigation, if they believe that the Appropriate Authority would be likely to determine that the special conditions are met.

The Ombudsman’s written report will state their belief and grounds for it. The special conditions are that:

- Misconduct proceedings would not prejudice any criminal proceedings;
- There is sufficient evidence, without the need for further evidence, to establish on balance of probabilities that the conduct constitutes gross misconduct; and
- It is in the public interest that the member ceases to be an officer without delay.

Clause 55: Police Ombudsman: power to submit a report to appropriate authority before criminal proceedings

Clause 55 amends Section 59 of the Police (Northern Ireland) Act 1998 to allow the Police Ombudsman for Northern Ireland to submit a written report to the Appropriate Authority before any criminal proceedings have concluded, if they believe that the Appropriate Authority would be likely to determine that the special conditions are met.

The Ombudsman’s written report will state their belief and grounds for it. The special conditions are that:

- Misconduct proceedings would not prejudice any criminal proceedings.
- There is sufficient evidence, without the need for further evidence, to establish on balance of probabilities that the conduct constitutes gross misconduct, and
- It is in the public interest that the member ceases to be an officer without delay

Clause 56: Delegation of functions of the Policing Board

This clause inserts a new provision into the Police (Northern Ireland) Act 2000 to provide the Northern Ireland Policing Board with the power to delegate functions of the Board to Board officials.

It is intended to use the new power to delegate a number of decision-making roles on matters such as pensions forfeiture, ill-health retirement, injury on duty and other miscellaneous benefits. This arrangement is necessary for practical reasons, given the volume of casework involved and the number of decisions required to be made in a timely manner.

This power is being made in response to the judgment in the case of *McKee and Others v Charity Commission N.I.*

Clause 57: Removal of requirement to audit performance plans etc.

This clause repeals section 29 of the Police (Northern Ireland) Act 2000, which currently requires the Comptroller & Auditor General (C&AG) to audit the Policing Board's performance plan and performance review.

However, the provisions at section 30 of that Act (examination of compliance with requirements under section 28 relating to economy, efficiency and effectiveness) would remain in place, should an examination of the Board's compliance with section 28 ever be required.

This amendment is being made following a recommendation by the C&AG and would bring the position in Northern Ireland into line with that in England and Wales.

Criminal Proceedings

Clause 58: Consent for prosecution in cases of conspiracy to commit offence outside Northern Ireland

This clause makes amendments to existing legislation relating to conspiracy to commit offences outside Northern Ireland. It provides that the consent of the Advocate General for Northern Ireland is required when instituting criminal proceedings in Northern Ireland.

This will bring Northern Ireland into line with England and Wales, where the consent of the Attorney General for England and Wales (who is also the Advocate General for Northern Ireland) is required for the institution of criminal proceedings in respect of conspiracy to commit offences outside the United Kingdom.

Clause 59: Death of child or vulnerable adult: limitation of power to “No Bill” alternative charge

This clause closes a gap in the law in relation to the offence of causing or allowing a child or vulnerable adult to die (under section 5 of the Domestic Violence, Crime and Victims Act 2004) and section 7 of the 2004 Act which provides special rules for trials in Northern Ireland where a defendant is charged, within the same proceedings, with the section 5 offence and also with murder or manslaughter in relation to the same death.

If not addressed, it is considered that this gap could lead to a charge of murder or manslaughter being subject to an entry of “No Bill” so that the defendants would not have to face criminal proceedings in relation to that charge, even where the judge is not satisfied that the related section 5 offence, i.e. the lesser offence, should also be no billed.

The amendment will mean that a judge can enter a “No Bill” on a charge such as murder or manslaughter only if the judge also enters a “No Bill” on the related charge under section 5 of the Domestic Violence, Crime and Victims Act 2004.

Such restrictions on the entry of a “No Bill” are needed due to the evidential difficulties in such cases and to ensure that evidence is heard for all the charges before a Judge can consider whether any of the charges should be dismissed. This removes the risk of the more serious charges of murder or manslaughter being dismissed prematurely, i.e. before all the evidence for the whole case has been heard.

Clause 60: Examination in criminal proceedings through intermediary

This clause substitutes a new paragraph (1) of Article 21BA (examination of accused through intermediary) of the Criminal Evidence (Northern Ireland) Order 1999. The effect is to extend the provision of Registered Intermediaries beyond the Magistrates’ Court and Crown Court to the County Court and the Court of Appeal on an appeal. This will provide vulnerable defendants with communication difficulties with the assistance they need to participate effectively in appeal proceedings as a witness giving oral evidence in court.

Transfer of functions related to Restorative Justice Schemes

Clause 61: Accredited Providers of Restorative Justice Services

Clause 61 provides for the transfer of functions relating to restorative justice from the Secretary of State to the Department of Justice (the Department).

Clause 61(1) places a statutory duty on the Department to determine requirements for accreditation of persons and maintain a register of persons accredited.

Clause 61(2) in determining such requirements, the Department must include a requirement to cooperate with the Chief Inspector of Criminal Justice Inspection in Northern Ireland (CJIJNI).

Clause 61(3) provides examples of other requirements that may be determined by the Department.

If a person applies and the Department determines they meet the requirements, that person will be added to the register under new **Clause 61(4)**.

Clause 61(5) provides for a statutory role for the Chief Inspector of CJINI to inspect and report on accredited persons.

Clause 61(6) to (8) contain further detail about the register of accredited persons maintained and published by the Department, including issues around expiration and reaccreditation, appeals, and how a person no longer meeting the requirements can be removed by the Department.

Finally, **Clause 61(9)** repeals section 43 of the Justice and Security (NI) Act 2007.

Legal Aid

Clause 62: Legal aid charges to be registrable in the statutory charges register

This clause amends Schedule 11 to the Land Registration Act (Northern Ireland) 1970 to include certain charges created by Article 12(5) of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 or created in favour of the Department of Justice by Article 17(7) of the Access to Justice (Northern Ireland) Order 2003.

This allows the Legal Services Agency to register such charges in the Statutory Charges Register.

Clause 63: Power to require legal aid remuneration to be determined as set out in regulations

This provision inserts a new Article 12(3A) into the Access to Justice (Northern Ireland) Order 2003 to clarify that any remuneration order made under Article 12(3), which relates to remuneration for providers of civil legal services, may include provisions about how any person who is to determine the amount of remuneration to be paid, may or must determine that payment. It clarifies that where the Department sets out any rates and arrangements for proceedings in the High Court and Court of Appeal, the Taxing Master will apply those to costs assessments which are to be paid out of the legal aid fund.

A new Article 24(3A) is similarly inserted into the Access to Justice (Northern Ireland) Order 2003 to provide the same clarification in relation to remuneration orders made under Article 24(3), which relate to remuneration for providers of criminal defence services.

Rehabilitation of Offenders

Clause 64: Rehabilitation Periods for Convictions

Clause 64 amends Article 6 of the Rehabilitation of Offenders (Northern Ireland) Order 1978 (“the 1978 Order”). Article 6 of the 1978 Order sets out the rehabilitation periods attached to particular sentences and disposals.

Article 6(1) of the 1978 Order lists those sentences which are excluded from rehabilitation. In particular Article 6(1)(b), (d) and the second sub-paragraph (e) provides that the following sentences are currently excluded from rehabilitation –

- a sentence of imprisonment or corrective training for a term exceeding 30 months;
- a term exceeding 30 months passed under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998; and
- a sentence of detention for a term exceeding 30 months passed under section 209 of the Armed Forces Act 2006.

Clause 64(2) amends references to “terms exceeding 30 months” to “a term exceeding 10 years” in respect of these sentences.

Article 6(2) of the 1978 Order sets out Tables A and B which list the rehabilitation periods attached to particular sentences.

Clause 64(3) inserts new Tables A and B into Article 6(2). These new Tables set out the new rehabilitation periods which will be attached to the sentences listed in the Table. The sentences listed in the Table have been updated to take account of the change from 30 months to 10 years in sentences excluded from rehabilitation. Table A relates to rehabilitation periods regardless of the age of the offender and Table B relates to custodial sentences only available where the offender is under 18 years of age. The new rehabilitation periods will run from the date of conviction until the end of the period imposed in the Tables, this will be the length of the sentences imposed plus a specified under of years or months.

New Article 6(2B) of the 1978 Order provides that for the purposes of determining the end of the rehabilitation period specified in the Tables, the term of any sentence is to be increased by any period during which the person is unlawfully at large. New Article 6(2C) makes provision in respect of determining rehabilitation periods for suspended sentences.

Clause 64(4) substitutes Article 6(3) of the 1978 Order to provide that where a person receives an absolute discharge for an offence, the person is to be treated as a rehabilitated person in respect of the conviction immediately after the order for the person's discharge is made. Currently a rehabilitation period of 6 months from the date of conviction applies.

Clause 64(5) amends Article 6(4) of the 1978 Order to provide that where a person is conditionally discharged, bound over to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour, or placed on probation, the rehabilitation period applicable to the sentence ends when the order for conditional discharge or probation order or (as the case maybe) the recognizance to keep the peace or to be of good behaviour or to keep the peace and be of good behaviour ceases or ceased to have effect. Currently the rehabilitation period for these disposals is one year from the date of conviction or a period beginning with that date and ending with the order ceases or ceased to have effect, whichever is longer.

Clause 64(6) and (7) amends Article 6(4A) and (4B) of the 1978 Order respectively to provide that in respect of an order under Article 211 of the Armed Forces Act 2006 (detention and training) or a service community order or an overseas community order under that Act, the rehabilitation period shall end when the order ceases to have effect.

Currently the rehabilitation period for such orders ranges from 1 year to 5 years from the date of conviction or the length of the order, whichever is longer.

Clause 64(8) amends Article 6(5) of the 1978 Order to provide that in respect of sentences imposed under the Army Act 1955 or the Air Force Act 1955 or Schedule 4A to the Naval Discipline Act, the rehabilitation period ends when the order or requirement ceases or ceased to have effect. Currently the rehabilitation period ends one year after the date of conviction or whenever the order ceases or ceased to have effect, whichever is longer.

Clause 64(9) amends Article 6(6) of the 1978 Order to provide that in respect of a Juvenile Justice Centre Order, an Attendance Centre Order, a Reparation Order, a Community Responsibility Order or a Youth Conference Centre Order, the rehabilitation period will end when the order ceases or ceased to have effect. Currently the rehabilitation period for these orders is a period beginning with the date of the conviction and ending one year after the order ceases or ceased to have effect.

Clause 64(11) substitutes Article 6(8) of the 1978 Order to provide that where in respect of a conviction an order was made imposing any disqualification, disability, prohibition, penalty, requirement or restriction or which is intended to regulate behaviour the rehabilitation period ends when the order ceases or ceased to have effect. This substitution allows reference to a requirement, restriction or order intended to regulate behaviour to be included in Article 6(8).

Clause 64(12) adds in new Article 6(8A) to the 1978 Order to provide that in respect of a fine or any other sentence which is subject to rehabilitation but for which no rehabilitation period

is specified in paragraphs (2) to (8) of Article 6, the rehabilitation period ends (1) in the case of offenders over 18 at the date of conviction at the end of the period of 12 months beginning with the date and (2) where the offender was under 18 at the date of conviction at the end of the period of 6 months beginning with that date.

Clause 64(14) and (15) make minor amendments to Articles 7(5) and 8(1)(c) of the 1978 Order in consequence of amendments made to Article 6.

Clause 64(16) provide that the amendments made by this section apply in relation to convictions before the commencement day as well as in relation to convictions on or after that day.

Clause 64(17) provides that no person treated as a rehabilitated person and no conviction treated as spent before the commencement day are to cease to be treated as such merely because of amendments made in this section.

Clause 64(18) defines “commencement day” as the day on which the section comes into operation.

Clause 64(19) provides consequential amendments to other statutes as a result of this section.

Clause 65: Applications in respect of certain sentences otherwise excluded from rehabilitation

Clause 65 inserts new Article 7A into the 1978 Order to provide the DOJ with a regulation making power to allow a person who is subject to certain specified sentences, which are excluded from rehabilitation under Article 6(1) of the 1978 Order, to apply to a court for an order to have the person to be treated as a rehabilitated person in respect of that sentence.

The sentences in respect of which such an application may be able to be made are a sentence of imprisonment or corrective training for a term exceeding 10 years, a sentence of detention for a term exceeding 10 years passed under Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 and a sentence of detention for a term exceeding 10 years passed under section 209 of the Armed Forces Act 2006.

Criminal Record Certificates

Clause 66: Automatic review of certain criminal records certificates

Clause 66 amends paragraph 6 of Schedule 8A to the Police Act 1997 to introduce two new sub-paragraphs as follows.

The heading before paragraph 6 is amended to reflect the fact that all certificates containing spent convictions or other disposals of a person under 18 can be automatically considered by the Independent Reviewer.

Paragraph 6(1)(b) is amended to extend the conditions under which an automatic review of a certificate would take place, by adding two new sub-paragraphs.

New sub-paragraph (1A) is inserted to require the automatic review of certificates containing only spent convictions for offences that occurred at a time when a person was aged under 18.

New sub-paragraph (1B) is inserted to require an automatic review of a certificate to take place where that certificate contains details of non-court disposals which occurred at a time when a person was aged under 18.

New sub-paragraph (1B) is inserted to enable the automatic review of certificates containing spent convictions or other disposals by the Independent Reviewer to those that occurred at a time when a person was aged under 18 only.

Paragraph 6(3)(a) and (b) is amended to provide that the Independent Reviewer must, when reviewing any certificate as required by paragraph 6, only review spent convictions and other disposals that occurred at a time when a person was aged under 18.

Clause 67: Matters to be included in criminal record certificates

Clause 67 amends section 113A of the Police Act 1997 (“the 1997 Act”). Section 113 of the 1997 Act makes provision in relation to criminal record certificates and the relevant matters which will be contained in them.

Clause 67(2) amends section 113A(6) of the 1997 Act to insert a revised definition of “relevant matter”. The revised definition makes reference to a relevant matter as including “a conviction for an offence falling within Schedule 8ZA” and “a caution, restorative caution, diversionary youth conference or informed warning for an offence failing within Schedule 8ZA”. Schedule 8ZA is a new Schedule being inserted into the 1997 Act to replace section 113A (6D). Section 113A (6D) lists the offences which are referred to in the definition of relevant matter. Clause 67(3) will omit subsection (6D) and clause 67(10) will insert Schedule 8ZA.

Clause 67(4) amends subsection (6E) of section 113A of the 1997 Act. It inserts a new paragraph (f), and inserts new paragraphs (g), (h) and (i). These new paragraphs set out the definitions of “sentence of imprisonment”, “custodial order”, “sentence of service detention” and “service disciplinary proceedings”. Some of these definitions are already included in subsection (6E). These revised definitions provide further explanation of these terms for ease of reference.

Clause 67(5) inserts new subsection (7A) into section 113A of the 1997 Act to allow the Department to amend Schedule 8ZA. Clause 67(9) provides that the new Schedule 8ZA is amended by way of order which will be subject to the affirmative resolution procedure.

Clause 67(6), (7) and (8) make small tidying up amendments to various subsections of section 113 of the 1997 Act to ensure the terminology used and legislation referred to is correct for Northern Ireland.

Clause 67 inserts new Schedule 8ZA into the 1997 Act which list the offences referred to in the definition of “relevant matter” in section 113A(6E).

An amendment is also made to Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 to provide that the offences which must always be disclosed under that Order are defined by reference to new Schedule 8ZA.

Court Security

Clause 69: Security at buildings used for courts and tribunals etc.

The clause amends Schedule 3 to the Justice (Northern Ireland) Act 2004 to provide the Department of Justice with regulation-making powers to add to the list of ‘relevant buildings’ to ensure that the Department has the power to extend the use of court security officers to areas of business that are not covered by existing legislation.

The power to specify a building includes a power to specify so much of that building as is used for the purposes of, or in connection with, the sittings of a judicial officer.

For clarity, judicial officer is defined for the purposes of this provision only, namely a “listed judicial office” within the meaning given by section 2 of the Justice (Northern Ireland) Act 2002, or a person exercising judicial or quasi-judicial functions.

Day of release from detention

Clause 70: Day of release from detention

This clause amends the Prisons and Young Offenders Centres Rules (Northern Ireland) 1995 by providing the Northern Ireland Prison Service with a permissive power to bring forward by one day, or in some instances two days, the day of a prisoner’s release, if that day falls on a Friday. This clause will apply specifically to those prisoners who receive adult sentences and who are therefore not subject to post release supervision by the Probation Board for Northern Ireland.

This clause will also give the Prison Service a permissive power to bring further forward the release day of those individuals who, under existing Prison Rules, currently have that day

changed to a Friday when their original release day falls on a Saturday, a Sunday or a public holiday.

It is envisaged that bringing forward release dates from Fridays could give individuals more time to link in with community-based service providers, for example Jobs and Benefits Offices, the Housing Executive, Community Mental Health and Addiction Services, General Practitioner surgeries and Social Services, and that this could be particularly beneficial to those who do not enjoy formal Probation Board support upon release from custody.

Part 7: Final provisions

Clause 71: Further provision

This clause enables the Department to bring forward regulations to make any supplementary, incidental, consequential, transitional, transitory or saving provision considered necessary for the purposes of giving the full intended effect of the provisions of the Bill; and specifies the Assembly control of any such regulations: if the regulations amend primary legislation, a draft of the instrument must be laid before and approved by a resolution of the Assembly; other regulations are subject to negative resolution.

Clause 72: Interpretation

This clause provides that for the purpose of this Act, ‘statutory provision’ has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Clause 73: Commencement

This clause sets out the commencement arrangements for the provisions of the Bill, specifying those provisions that are to come into operation immediately after Royal Assent; those what will come into operation 2 months after Royal Assent; and those that are to come into operation on days to be appointed by order made by the Department of Justice.

Clause 74: Short title

This clause sets out the short title for the Act.

SCHEDULES

Schedule 1: Northern Ireland Commissioner for the Retention of Biometric Material

Schedule 1 inserts new Schedule 2B into PACE NI, which makes provision for the appointment of the Northern Ireland Commissioner (the Commissioner) for the Retention of Biometric Material.

Paragraphs 2 and 3 sets out that the initial appointment may not exceed four years and that the Commissioner may not be appointed for more than two terms. The maximum length of appointment permitted will be eight years.

Paragraph 4 sets out the circumstances in which the Department may remove the Commissioner from office. This includes circumstances such as undeclared criminal convictions and criminal convictions after being appointed Commissioner.

Paragraph 5 confers power on the Department regarding the payment of allowances and expenses to the Commissioner and enables the Department to provide staff, accommodation, equipment and other facilities to support the work of the Commissioner.

Paragraph 6 gives the Commissioner the power to authorise another person to perform certain functions of the Commissioner. It is expected that this power would be utilised either during a period when the post is vacant or where the Commissioner is unable to perform their functions e.g. where the Commissioner is unwell for a period of time.

Schedule 2: Retention of fingerprints and DNA profiles: amendments

Part 1: Further provision in relation to certain disposals

Paragraph 2 amends Article 53B(1A) of the Police and Criminal Evidence (Northern Ireland) Order 1989 to include conditional cautions under section 71 of the Justice Act (Northern Ireland) 2011. This will be commenced when section 71 is commenced.

Paragraph 3 adds a new Article 63QA “persons given a prosecutorial fine notice”. This will be commenced when section 18 of the Justice Act (Northern Ireland) 2015 is commenced.

Part 2: Minor and consequential amendments

Paragraph 4 makes consequential amendments to Article 53 of PACE NI.

Paragraph 4(2) adds the definitions of ‘DNA profile’ and ‘DNA sample’ to the interpretation of Part 6 in Article 53(1) of PACE NI.

Paragraph 4(3) inserts new paragraphs (3A), (3B) and (3C) into Article 53 of PACE NI.

Paragraph (3A) provides that a sample is not “insufficient” just because it has been destroyed under Article 63X (and so destruction for this reason cannot be grounds for the police to take a fresh DNA sample).

Paragraph (3B) provides that the definition of a person who is ‘charged with an offence’ includes a complaint being laid against the person.

Paragraph (3C) provides that a ‘complaint being laid against a person for an offence’ means the person has, or is suspected of having, committed an offence, without the person having been charged with the offence, as per Article 20 of the Magistrates’ Courts (Northern Ireland) Order 1981.

Paragraph 5 adds the offence of robbery and assault with intent to rob (section 8 of the Theft Act (Northern Ireland) 1969) to the list of qualifying offences in Article 53A(2) of PACE NI.

Paragraph 6 inserts a new Article 53B into PACE NI, which provides at paragraph (1) that for the purposes of Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989 a person convicted of an offence also includes a caution (which is admitted and which was committed when the person was over 18), a person found not guilty by reason of insanity, and a person found to be unfit to be tried and to have done the act charged in respect of the offence.

Article 53B(2) provides that for the purposes of Part 6 of the Police and Criminal Evidence (Northern Ireland) Order 1989, a person being given a caution (including by virtue of Article 53B(1)(a)) includes reference to informed warnings and restorative cautions.

Article 53B(3) provides the power for the Department to amend Article 53B (2) by regulations to reflect any name changes to informed warnings or restorative cautions.

Article 53B(4) provides that Part 6 of PACE NI applies irrespective of the provisions of the Rehabilitation of Offenders (Northern Ireland) Order 1978. Convictions or cautions for offences as stipulated in section 101A of the Protection of Freedoms Act 2012 are to be disregarded as convictions or cautions.

Paragraphs 7 to 22 deal with consequential amendments and repeals.

In particular, paragraph 14 adds a new paragraph to Article 89 of PACE NI (orders and regulations) regarding the requirement for regulations under Articles 53B(1B), 63G(4), 63S(4), 63U or 63V to be approved by a resolution of the Northern Ireland Assembly before being made (draft affirmative resolution procedure).

Schedule 3: Youth custody and supervision orders: breach of supervision requirements

Schedule 3 inserts Schedule 1B into the Criminal Justice (Children) (Northern Ireland) Order 1998. It makes provision for dealing with breaches of supervision requirements under a youth custody and supervision order.

Schedule 4: Child bail and custody: Minor and consequential amendments

Schedule 4 sets out a number of minor and consequential amendments to existing legislation made necessary by the new youth provisions in Part 2 of the Bill. Part 1 of this Schedule covers

amendments relating to bail, and Part 2 covers those relating to sentencing, remand and committal to custody.

Schedule 5: Organised Crime Groups: Amendments

Schedule 5 makes a number of amendments relating to the two new organised crime offences.

Paragraph 1 of Schedule 5 inserts the two offences in Part 3 of Schedule 7A to the Criminal Justice and Public Order Act 1994, with the effect that this will facilitate cross-border powers of arrest in urgent cases.

Paragraph 2 of Schedule 5 inserts the two offences as ‘lifestyle offences: Northern Ireland’ in Schedule 5 to the Proceeds of Crime Act 2002, with the effect that this will allow the Court to recover any benefit received by the defendant in the commission of either offence.

Paragraph 3(2) of Schedule 5 inserts the two offences as ‘serious offences in Northern Ireland’ in Part 2 of Schedule 1 to the Serious Crime Act 2007, for the purposes of Serious Crime Prevention Orders.

Paragraph 3(3) of Schedule 5 inserts the two offences as listed offences in Part 4 of Schedule 3 to the Serious Crime Act 2007, with the effect that this will avoid duplicious inchoate offences already contained within that Act.

Paragraph 4 of Schedule 5 inserts the two offences as ‘serious offences’ in Schedule 1 to the Criminal Justice (Northern Ireland) Order 2008, for the purposes of sentencing dangerous offenders

Paragraph 5 of Schedule 5 inserts the two offences in part 1 of Schedule 6 to the Procurement Act 2023, with the effect that conviction will constitute a mandatory ground for exclusion from procurements.

Schedule 6: Repeal of Public Order Offences: Consequential Amendments

Schedule 6 provides for amendments consequential upon **Clause 26(1) and (2)**, which repeals Section 4 of the Vagrancy Act 1824 and the Vagrancy (Ireland) Act 1847.

Schedule 7: Live Links: Presumption of giving evidence by live link in certain cases

Schedule 7 lists the public authorities for the purposes of Clause 43

Schedule 8: Use of live links: amendments and transitional provisions

Schedule 8 Part 1 contains amendments and repeals that are consequential on the live link provisions of the Bill; Part 2 contains transitional provision.

Schedule 9: Power to Photograph Certain Persons at a Police Station

Article 64A of PACE NI provides a power for the police to take photographs of a person who is detained in a police station and/or arrested. If a person is arrested, charged or convicted without a photograph being taken, there is no power to require that person to attend a police station at a later stage for this to be done.

The amendments to Article 64A of PACE NI as set out in Schedule 9 will ensure the consistency of ‘recall powers’ for fingerprints, DNA samples and photographs.

Paragraph (2) of Schedule 9 amends the existing power to take photographs in Article 64A of PACE NI by inserting new paragraphs (1C) to (1N). Article 64A(1C) confers a power to photograph certain persons at a police station, whilst Articles 64A(1D) to (1N) set out the circumstances in which that power may be exercised.

Article 64A(1D) provides that the power to take photographs applies where a person has been arrested for a recordable offence and released, charged with a recordable offence, or a complaint has been laid against that person for a recordable offence. For the power to apply, the requirements in Article 64A(1E) must be met (i.e. a photograph was not taken in the course of the investigation, or a photograph was taken but is unavailable or inadequate).

Article 64A(1F) provides that the power to take photographs applies where a person has been convicted of a recordable offence or given a caution relating to a recordable offence. For the power to apply, the requirements in Article 64A(1G) must be met (i.e. the person has not been photographed since they were convicted or cautioned, or a photograph was taken but is unavailable or inadequate).

Article 64A(1H) provides that the power to take photographs applies where a person has been convicted in a jurisdiction outside Northern Ireland and the act constituting the offence would constitute a qualifying offence in Northern Ireland as set out in Article 53A. For the power to apply, the requirements in Article 64A(1I) must be met (i.e. the person has not been photographed already or if they have, the photograph taken is unavailable or inadequate).

Article 64A(1J) defines the meaning of ‘unavailable’ and ‘inadequate’.

Article 64A(1K) provides that the authorisation of an inspector is required before taking a photograph of a person falling within Article 64A(1C) and that the inspector must be satisfied that the taking of the photograph is necessary to assist in the prevention or detection of crime.

Article 64A(1M) provides that a person must be informed of the reason for the photograph being taken, the power being used, and the fact that authorisation has been given (where authorisation is necessary). These matters are to be recorded as soon as practicable after the photograph is taken.

Paragraphs 3 and 4 extend the recall power in Schedule 2A of PACE NI to include the taking of photographs. These provisions mirror the existing provisions in Schedule 2A of PACE NI relating to fingerprints and non-intimate samples.

Schedule 10: Police Barred List and Police Advisory List

Schedule 10 inserts a new Part 7A into the Police (Northern Ireland) Act 1998 to make provision for police barred and police advisory lists for Northern Ireland

New section 65A of new Part 7A places a duty on the Chief Constable to maintain a police barred list for Northern Ireland.

New section 65B sets out when a person must be included in the barred list. This is where:

- A person ceases to be a member of the police (other than a senior officer) by virtue of being dismissed, or required to resign, at proceedings conducted under regulations made under section 25(3) or 26(3),
- A person is a former member of the police (other than a senior officer) and there is a finding in relation to the person in disciplinary proceedings that the person would have been dismissed, or required to resign, if the person had still been a member of the police,
- The person ceases to be a member of the police support staff by virtue of being dismissed and the reason or one of the reasons for the dismissal relates to conduct, efficiency or effectiveness.

New section 65C lists further persons who must be included in the barred list where that person has been dismissed, or required to resign, or would have been dismissed or required to resign, in the case of former senior officers, for disciplinary reasons. These are senior officers, former senior officers of the PSNI and senior employees of the Policing Board. The clause places a duty on the Board report the dismissal of those persons to the Chief Constable.

New section 65D provides that the Chief Constable must include the airport police and support staff, and the harbour police and support staff, who have been dismissed on the barred list. The duty to inform the Chief Constables rests with the relevant transport authority.

New section 65E provides that the Chief Constable must include persons designated under section 31 of the Police (Northern Ireland) Act 2003, Ombudsman staff, staff of the Policing Board and civil servants (civil service is included because police support staff, staff of the Ombudsman and staff of the Board might be civil servants on secondment) who have been dismissed on the barred list. The report must be made by the relevant employer.

New section 65F sets out the effect of inclusion on the barred list. A law enforcement employer cannot employ or otherwise appoint a barred person. Law enforcement employer is defined in new section 65R.

New section 65G provides how a person can be removed from the barred list. This applies where a decision to dismiss is set aside. A relevant authority must report such a decision to the Chief Constable.

New section 65H provides the Chief Constable with the power, where it is considered to be in the public interest, to disclose to certain specified persons information included in the barred list. The persons this information may be disclosed to includes the Policing Board and the Ombudsman.

New section 65I places a duty on the Chief Constable to maintain a police advisory list for Northern Ireland.

New section 65J sets out when a person must be included in the advisory list. This is where a person ceases to be a person serving with the police (other than a senior officer) or a member of police support staff by resigning or retiring after a relevant allegation about the person comes to the Chief Constable's attention but before disciplinary proceedings are brought (or if brought are concluded). This does not apply if before the person resigned or retired it was decided that no disciplinary proceedings would take place.

It also applies to a person who ceases to be a member of the police force (other than a senior officer) by resigning or retiring and a relevant allegation comes to the attention of the Chief Constable after the person resigned or retired.

A "relevant allegation" is an allegation relating to conduct, efficiency or effectiveness and it of a type that if the person had not resigned or retired might have resulted in that person being dismissed.

New section 65K sets out further persons who the Chief Constable must include in the advisory list where a relevant authority makes a report to the Chief Constable. This includes senior officers of the PSNI and senior support staff. The obligation to report to the Chief Constable rests with the Board.

New section 65L provides that Chief Constable must include airport police and support staff, the harbour police and support staff who have been reported to him in the advisory list. The duty to report rests with the relevant transport authority.

New section 65M provides that the Chief Constable must include persons designated under section 31 of the Police (Northern Ireland) Act 2003, member of staff of the Policing Board, staff of the Ombudsman and an employee of the civil service who have been reported to him on the advisory list. (Civil servants are included to ensure those who civil servants on

secondment to the Board or the Ombudsman and are dismissed by the civil service as a result of conduct arising during their time on those roles are caught).

New section 65N sets out the effect of inclusion in the advisory list. A law enforcement employer must check the advisory list to ascertain whether the proposed employee or appointee is included in it.

New section 65P provides for removal from the advisory list. A person must be removed from the advisory list if it is determined that no disciplinary proceedings will be brought, the disciplinary proceedings are withdrawn or the disciplinary proceedings are concluded without there being a finding that the person would have been dismissed. A relevant authority must make a further report to the Chief Constable where this is the outcome.

New section 65Q provides the Chief Constable with the power to disclose, where it is considered to be in the public interest to do so, information included in the advisory list to certain specified persons. This included the Board and the Ombudsman.

New sections 65R and 65S set out interpretation provisions relating to these new sections.

FINANCIAL EFFECTS OF THE BILL

137. In terms of financial effects, the Bill as a whole will primarily be delivered within existing resources.

138. Some provisions will be the subject of individual costs and benefits analysis and subsequent proportionate business case requiring appropriate approvals, which will be requested from the Department of Finance as required by individual policy and business areas as and where appropriate.

HUMAN RIGHTS ISSUES

139. All proposals have been screened and are considered to be Convention compliant.

EQUALITY IMPACT ASSESSMENT

140. All of the constituent parts of the proposed Bill have been screened as not having an adverse impact on any of the section 75 categories in the Northern Ireland Act 1998.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

141. The Department considers that no direct costs will be created for the private or voluntary sectors as a result of the provisions of the Bill.

DATA PROTECTION IMPACT ASSESSMENT/DATA PROTECTION BY DESIGN

142. Data Protection screening exercises have been carried out in respect of each of the constituent parts of the Bill. This noted that the Department of Justice will not collect, use, store or share any personal data arising from the provisions contained in the Bill.
143. However, criminal justice agencies investigating and prosecuting offences and applying the new arrangements contained in the provisions of the Bill will need to collect and process personal data on victims, witnesses and the accused.
144. The data will be processed in line with the robust procedures and protocols already in place for investigating and prosecuting other existing criminal offences.
145. For legal aid purposes, personal information is also collected as part of the process of applying for and determining remuneration. The screening exercise for these provisions confirmed that provisions will not affect how data is collected, handled or processed, and the Legal Services Agency's current data protection policies and procedures will continue to apply.

RURAL NEEDS IMPACT ASSESSMENT

146. Rural screening exercises have been carried out in respect of each of the constituent parts of the Bill. This noted that all of the provisions in the Bill were screened out as having no impact on rural needs as all of the provisions of the Bill will apply equally to all areas of Northern Ireland, both urban and rural.

LEGISLATIVE COMPETENCE

147. At Introduction, the Minister for Justice had made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Justice Bill would be within the legislative competence of the Northern Ireland Assembly."

SECRETARY OF STATE'S CONSENT

148. A statement is required under section 8 of the Northern Ireland Act 1998, on Secretary of State consent:

"The Secretary of State had consented under section 10(3)(b) of the Northern Ireland Act 1998 to the Assembly considering this Bill."



**Northern Ireland
Assembly**

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