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Justice Bill: Supplementary Information

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This Briefing Paper provides further information for the Justice Committee in relation to the meaning of qualifying and recordable offences specified within the draft Justice Bill.

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

Overview

The Justice Bill was introduced into the Assembly on 17 September 2024. The legislation covers a number of areas, including proposals to amend retention periods for DNA and biometric material. This supplementary information should be read in conjunction with the Research and Information Service Bill Paper on the Justice Bill (NIAR 089-2024).¹

1 Qualifying Offences

The proposed retention periods contained in the Bill are based on a number of factors, including whether a qualifying offence is involved. A qualifying offence is an offence listed in Article 53A of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI).² In general, the list broadly covers serious violent, sexual or terrorist offences. The concept of a qualifying offence is used to distinguish between serious and less serious offences for the purposes of the retention regime.

Article 53A of PACE NI defines qualifying offences as the following:

- murder
- manslaughter
- false imprisonment
- kidnapping
- Offences under various sections of the Offences Against the Person Act 1861:
 - Conspiring or soliciting to commit murder (section 4)
 - Threats to kill (section 16)
 - Shooting or attempting to shoot, or wounding with intent to do grievous bodily harm (section 18)
 - Inflicting bodily injury with or without weapon (section 20)
 - Attempting to choke in order to commit any indictable offence (section 21)
 - Using chloroform in order to commit any indictable offence (section 22)

¹ Northern Ireland Assembly Research and Information Service, [Justice Bill Paper](#) (16 September 2024)

² Police and Criminal Evidence (Northern Ireland) Order 1989, [Article 53A](#)

- Maliciously administering poison so as to endanger life or inflict grievous bodily harm (section 23)
- Maliciously administering poison with intent to injure, aggrieve, or annoy any other person (section 24)
- Assault occasioning bodily harm (section 47)
- Offences under the Explosive Substances Act 1883:
 - Causing an explosion likely to endanger life or property (section 2)
 - Attempt to cause an explosion, or making or keeping explosive with intent to endanger life or property (section 3)
- An offence under section 20 of the Children and Young Persons Act (Northern Ireland) 1968 relating to cruelty to persons under sixteen
- An offence under section 9 or 10 of the Theft Act (Northern Ireland) 1969 relating to burglary or aggravated burglary
- An offence under Article 3 of the Criminal Damage (Northern Ireland) Order 1977 relating to destroying or damaging property required to be charged as arson
- An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978 relating to indecent photographs of children
- An offence under Article 172B of the Road Traffic (Northern Ireland) Order 1981 on aggravated vehicle-taking involving an accident which caused a person's death
- An offence under section 1 of the Aviation Security Act 1982 relating to hijacking an aircraft in flight
- An offence under Article 4 of the Child Abduction (Northern Ireland) Order 1985 relating to the abduction of a child by other persons
- An offence under section 9 of the Aviation and Maritime Security Act 1990 relating to the hijacking of ships
- An offence under sections 57 to 59 of the Sexual Offences Act 2003 relating to trafficking for sexual exploitation
- An offence under section 5 of the Domestic Violence, Crime and Victims Act 2004 relating to causing or allowing a child or vulnerable adult to die or suffer serious physical harm
- Offences under the Firearms (Northern Ireland) Order 2004:

- Possession of a firearm or ammunition with intent to endanger life or cause serious damage to property (article 58)
- Use of a firearm or imitation firearm to resist arrest (article 59)
- Carrying a firearm or imitation firearm with criminal intent (article 60)
- An offence listed in section 41(1) of the Counter-Terrorism Act 2008 linked to terrorism, including those relating to proscribed organisations, terrorist property, failure to disclose information about acts of terrorism, weapons training, directing terrorism, possessing things and collecting information for the purposes of terrorism and inciting terrorism outside the United Kingdom etc.
- Offences under the Sexual Offences (Northern Ireland) Order 2008:
 - Rape (article 5)
 - Assault by penetration (article 6)
 - Sexual assault (article 7)
 - Causing sexual activity without consent (articles 8 to 11)
 - Rape and other offences against children under 13 (article 12)
 - Assault of a child under 13 by penetration (article 13)
 - Sexual assault of a child under 13 (article 14)
 - Causing or inciting a child under 13 to engage in sexual activity (article 15)
 - Sexual offences with a child under 16, including causing or inciting a child to engage in sexual activity, causing a child to watch a sexual act, sexual communication with a child and communicating with a person/group with a view to grooming a particular child/ any child (articles 16 to 22G)
 - Offences against children under 18 relating to abuse of position of trust (articles 23 to 26)
 - Sexual activity with a child family member (article 32)
 - Inciting a child family member to engage in sexual activity (article 33)
 - Paying for sexual services of a child (article 37)
 - Causing or inciting abuse through payment for sexual services and involvement in indecent images (article 38)
 - Controlling a child through payment for sexual services and involvement in indecent images (article 39)
 - Arranging or facilitating abuse through payment for sexual services and involvement in indecent images (article 40)

- Offences against persons with a mental disorder impeding choice (articles 43 to 46)
- Inducement, threat or deception to procure sexual activity with a person with a mental disorder (article 47)
- Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception (article 48)
- Engaging in sexual activity in the presence, procured by inducement, threat or deception, of a person with a mental disorder (article 49)
- Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception (article 50)
- Care workers involved in sexual activity with a person with a mental disorder (article 51)
- Care workers involved in causing or inciting sexual activity (article 52)
- Care workers involved in sexual activity in the presence of a person with a mental disorder (article 53)
- Care workers involved in causing a person with a mental disorder to watch a sexual act (article 54)
- Causing or inciting prostitution for gain (article 62)
- Controlling prostitution for gain (article 63)
- Administering a substance with intent (article 65)
- Intercourse with an animal (article 73)
- Sexual penetration of a corpse (article 74)
- An offence under section 1 or 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 relating to slavery, servitude and forced or compulsory labour and human trafficking
- An offence under paragraph 1 of Schedule 4 to the Space Industry Act 2018 relating to the hijacking of spacecraft
- An offence under section 28 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 relating to non-fatal strangulation or asphyxiation
- An offence under any of sections 144 to 146 and 156 to 158 of the Health and Care Act 2022 relating to virginity testing and hymenoplasty

- An offence under section 18 of the National Security Act 2023 relating to preparatory conduct or those listed in section 33(3)(a) relating to foreign power threat activity, including obtaining or disclosing protected information, obtaining or disclosing trade secrets, assisting a foreign intelligence service, entering a prohibited place for a purpose prejudicial to the UK, sabotage, foreign interference and obtaining material benefits from a foreign intelligence service.

Furthermore, a qualifying offence can also mean an ancillary offence relating to one of the offences listed above. An ancillary offence means:

- aiding, abetting, counselling or procuring the commission of the offence;
- an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence (including, in relation to times before the commencement of that Part, an offence of incitement);
- attempting or conspiring to commit the offence.

It may also be worth considering that the Interim Service Instruction on the Retention and Deletion of PACE Biometrics (November 2023) which is currently operated by the PSNI contains Appendix D which refers to ‘qualifying offences and other serious offences’ with a longer list of offences which it states will be “*treated in the same way as qualifying offences*” detailed in Article 53A of PACE NI.

2 Recordable Offences

A recordable offence is one punishable with imprisonment or otherwise set out in Regulation 2 of the Northern Ireland Criminal Records (Recordable Offences) [Regulations](#) 1989.³ These regulations have been made under Article 29 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE NI).⁴

These specify a number of other offences, including improper use of the public telecommunications system under the Telecommunications Act 1984, sending letters with intent to cause distress or anxiety under the Malicious Communications

³ [Northern Ireland Criminal Records \(Recordable Offences\) Regulations 1989](#)

⁴ Northern Ireland Assembly Research and Information Service, [Criminal Justice Bill Paper](#) (31 August 2012)

(Northern Ireland) Order 1988 and the offence of having an article with a blade or point in a public place under the Criminal Justice Act 1988. No further statutory regulations have since been made adding to the list specified in legislation under PACE NI.

Article 29 of PACE NI also states that the Department of Justice may make regulations providing for cautions, informed warnings and diversionary youth conferences. Provision for the recording of these in police records was put on a statutory footing under the Justice Act (Northern Ireland) 2015 and brought into operation by the Justice (2015 Act) (Commencement No. 3) Order (Northern Ireland) 2015.

However, a definitive list of all offences actually considered to be recordable in Northern Ireland is not readily available and would extend to a significant number of offences for which the Police take DNA and fingerprint material under PACE NI. The list of specified offences [published](#) on NI Direct which will never be filtered from a standard or enhanced criminal record certificate gives an indication of the number and type of offences which could be considered recordable but it is not exhaustive.⁵

Code D of the Codes of Practice under PACE NI summarises that recordable offences relate to those offences for which convictions, cautions and warnings may be recorded in national police records. Code D states that the recordable offences are any offences which carry a sentence of imprisonment on conviction (irrespective of the period, or the age of the offender or actual sentence passed) in addition to a number of the non-imprisonable offences which have been determined in regulations as being recordable.⁶

⁵ NI Direct, [AccessNI List of Specified Offences](#) (15 February 2023)

⁶ Department of Justice, [Police and Criminal Evidence \(Northern Ireland\) Order 1989 Code D](#) (May 2015), para 4A