



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

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Paper 56/25

23 June 2025

NIAR 129-2025

# Justice Bill: AccessNI Filtering Amendments

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This paper provides an overview of the amendments to the Justice Bill relating to AccessNI filtering.

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.

## Key Points

- There are three types of AccessNI criminal record check: Basic, Standard and Enhanced (with or without barred lists check). Filtering allows for the removal of some old and minor convictions and non-court disposals, meaning they do not appear on Standard and Enhanced AccessNI certificates issued for employment or volunteering.
- Serious crimes currently known as specified offences will always appear on a certificate under Section 113A(6D) of the Police Act 1997. A published list of specified offences which will never be filtered has also been issued by AccessNI.<sup>1</sup>
- This set of amendments to the Justice Bill aims to provide additional structure in the Police Act 1997 in relation to the information that must be contained in criminal records certificates and cannot be filtered by AccessNI.
- In 2023, a public consultation was conducted by the Department of Justice following a review of the list of specified offences. This received broad support from respondents with the amendments to the Justice Bill aiming to implement the proposals contained in this review.
- Clause 29A of the Justice Bill amends section 113A of the Police Act 1997 by replacing the serious offences listed in subsection (6D) with a new structured list in Schedule 8ZA. This new list groups offences into clear categories to make it easier to understand which offences would always appear on Standard and Enhanced criminal record checks. These offences cannot be removed through the filtering process.
- Schedule 8ZA can be updated in the future following consultation with the Department of Health, the PSNI and the Independent Reviewer. Updates would be made by way of an Order subject to the negative resolution procedure before the Assembly.
- Separately, clause 28A of the Justice Bill amends the rehabilitation periods set out under the Rehabilitation of Offenders (Northern Ireland) Order 1978 to allow more offences to be capable of becoming spent. A spent conviction is one which does not have to be declared once a specified period of time has elapsed with the

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<sup>1</sup> AccessNI, [List of Specified Offences which will never be filtered from Standard or Enhanced Criminal Record Certificates](#) (November 2023)

intention of helping to facilitate former offenders in gaining employment and promoting their reintegration into wider society. This legislation limits the time for which the declaration of an offence has to be made to employers or voluntary organisations but certain 'excepted' positions are set out in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979.<sup>2</sup>

- The rehabilitation of offenders legislation and the exceptions list have an impact on the criminal record regime and the filtering scheme applied by AccessNI. A spent conviction will not appear on a Basic check but will under a Standard or Enhanced check. Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 is also amended to reference the new list of offences at Schedule 8ZA of the Police Act. More information on the amendments contained in clause 28A on rehabilitation periods can be found in a further Research and Information Service briefing paper.<sup>3</sup>

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<sup>2</sup> There are certain 'excepted' jobs and professions set out in the Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979 where applicants must always declare their convictions, even where they are considered spent. These are not being amended under the Justice Bill.

<sup>3</sup> Further Northern Ireland Assembly Research and Information Service Papers on the Justice Bill can be found on the Justice Committee's webpage: [Research Papers on the Bill](#)

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# 1 Background

## 1.1 Types of AccessNI Checks

The disclosure of criminal history information by AccessNI forms an important part of pre-employment checks, with more than 176,000 disclosure applications processed in 2023-2024.<sup>4</sup> In accordance with Part V of the Police Act 1997, AccessNI provides 3 types of check:

**Table 1: AccessNI Checks**

Type of Check	Purpose	Information Disclosed
Basic	General employment purposes, including civil service and public bodies.	Unspent convictions.
Standard	Security Industry Authority licences or professional occupations, including accountants and legal professionals.	Spent and unspent convictions, cautions, diversionary youth conferences and informed warnings.
Enhanced (with or without a barred list check)	Working with children or vulnerable adults and typically sought for roles undertaking Regulated Activity as defined in Safeguarding Vulnerable Groups (Northern Ireland) Order 2007.	Standard plus relevant police ‘non-conviction’ information and barred list information.

(Sources: [NI Direct](#) and [Department of Justice](#))

The enhanced checks can provide details of relevant and proportionate ‘non-conviction’ information, for example details of arrests recorded on the Police National

<sup>4</sup> Department of Justice, [AccessNI Performance and Activity Report 01 April 2023 – 21 March 2024](#) (June 2024), page 6

Computer or police intelligence recorded on the Police National Database. A similar function is also carried out by the Disclosure and Barring Service (DBS) in England and Wales and by Disclosure Scotland in Scotland. For enhanced checks, the DBS also keeps two barred lists covering people who are unsuitable for working with children and people who are unsuitable for working with vulnerable adults. People on these lists are barred from regulated activity with children and vulnerable adults. It is also a criminal offence for someone on these lists to work or apply to work in regulated activity.

## 1.2 Supreme Court Ruling in 2009

There have been a number of judicial review challenges in relation to the inclusion of non-conviction information on enhanced checks. Therefore the police should consider two questions when deciding whether to disclose non-conviction information. Firstly, whether the information is reliable and relevant and, secondly, in light of the public interest and the likely impact on the applicant, whether it is proportionate to disclose the information.<sup>5</sup> The Court held that factors to be considered in assessing proportionality include: (i) the gravity of the relevant information; (ii) its reliability; (iii) its relevance; (iv) the existence of an opportunity to make representations; (v) the period that has elapsed since the relevant events; and (vi) the adverse effect of the disclosure.<sup>6</sup> In addition, if disclosure may be: (i) irrelevant; (ii) unreliable; or (iii) out-of-date, then the applicant should be given the opportunity to make representations to the Police prior to the decision to disclose.<sup>7</sup>

## 1.3 Criminal Records Regime Review by Sunita Mason

In 2010, the UK Government's Independent Advisor for Criminality Information was commissioned to review the retention of criminal record information in England and Wales. This covered a range of issues, including the filtering of old or minor

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<sup>5</sup> *R (on the application of L) v Commissioner of Police of the Metropolis* [2009] UKSC 3

<sup>6</sup> *Ibid*, paragraph 81

<sup>7</sup> *Ibid*, paragraph 46, 63 and 82

convictions information and the disclosure of non-conviction information.<sup>8</sup> In 2011, Ms Mason was appointed by the former Justice Minister to carry out a review of the legislative framework for criminality information in Northern Ireland. This report also made a number of recommendations aimed at a more restricted approach to disclosing non-conviction information as part of criminal records checks in Northern Ireland.<sup>9</sup>

Ms Mason stated that the release of minor and old information “*can be disproportionate*”. She noted that it “*cannot be appropriate that a single minor offence from 30 years ago, which the individual has put behind them in all other aspects of their lives suddenly appears on a criminal records check relating to volunteering work with children*”.<sup>10</sup> She recommended that the Department of Justice should bring forward proposals to filter out convictions which are both old and minor for disclosure purposes under Standard and Enhanced AccessNI checks.<sup>11</sup> However, she said that wider public protection needs meant that certain types of conviction should always be disclosed, for example if they related to assault and violence against the person, aggravated criminal damage, arson, drink driving, drug offences, robbery and sexual offences.

## 1.4 Further Legal Challenges

In 2013, the issue of disclosure was before the Court of Appeal, which held that mandatory and blanket disclosure as part of a standard or enhanced criminal records check was incompatible with Article 8 of the ECHR.<sup>12</sup> The case considered by the Court involved an individual, referred to as T, who had received two police warnings relating to two stolen bicycles when he was 11 years old. An enhanced criminal

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<sup>8</sup> S Mason, [A Common Sense Approach: Report on Phase 1](#) (February 2011) and [A Common Sense Approach: Report on Phase 2](#) (December 2011)

<sup>9</sup> S Mason, [A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland Part 1](#) (August 2011) and [A Managed Approach: A Review of the Criminal Records Regime in Northern Ireland Part 2](#) (March 2012)

<sup>10</sup> Ibid, page 52

<sup>11</sup> Ibid, page 53

<sup>12</sup> *R on the application of T, JB and AW v Chief Constable of Greater Manchester, Secretary of State for the Home Department and Secretary of State for Justice* [2013] EWCA Civ 25

records check disclosed these warnings when T applied to work at a football club aged 17 and enrol on a sports studies course at university aged 19. In 2014, the Supreme Court dismissed the Government's appeal against the declarations of incompatibility.<sup>13</sup>

In March 2013, changes were made to the law in England and Wales. In April 2014, the Department of Justice also laid orders so that certain old and minor convictions would no longer be disclosed on a Standard or Enhanced AccessNI certificate.<sup>14</sup> This brought in a filtering mechanism, but it was subject to some criticism for being inflexible as only a single conviction could be filtered, provided it did not result in a custodial sentence, meaning that multiple convictions for lesser offences, no matter how long ago they occurred, could not be filtered.<sup>15</sup>

In 2019, the Supreme Court gave judgment on a group of cases involving individuals who had been convicted or received cautions in respect of relatively minor offending which could impact their ability to obtain employment if disclosed.<sup>16</sup> The Court held that two elements of the disclosure schemes were disproportionate:

- The Multiple Convictions Rule: The filtering rules as introduced in 2013 in England and Wales and 2014 in Northern Ireland meant that where a person had more than one conviction, no filtering took place and all convictions appeared on the person's certificate. The Supreme Court said that this rule did not achieve its purpose of indicating propensity as it applied irrespective of the

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<sup>13</sup> *R (On the application of T and another) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2014] UKSC 35

<sup>14</sup> [The Police Act 1997 \(Criminal Record Certificates: Relevant Matters\) \(Amendment\) Order \(Northern Ireland\) 2014](#) and [The Rehabilitation of Offenders \(Exceptions\) \(Amendment\) Order \(Northern Ireland\) 2014](#). Broadly equivalent Orders for England and Wales can be found in: The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 and The Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2013

<sup>15</sup> NIACRO, [The Department of Justice's 'Rehabilitation of Offenders': A consultation on proposals to Reform Rehabilitation Periods in Northern Ireland](#) (March 2021) and resources from Unlock, [Challenging the DBS 'filtering' rules](#)

<sup>16</sup> *R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2019] UKSC 3



nature, similarity, number or time intervals of offences. The Court said the rule was disproportionate and incompatible with Article 8.<sup>17</sup>

- Non-Court Disposals for under 18s: The Supreme Court also ruled that the disclosure of non-court disposals (specifically warnings and reprimands which have since been replaced with youth cautions in England and Wales) for under 18s was disproportionate and incompatible with Article 8. The Court said that the purpose of these disposals were specifically designed to avoid damaging effects later in life through disclosure.<sup>18</sup>

## 1.5 Changes to the Filtering Rules

Following the Supreme Court judgment, an Order was laid to allow more than one offence to become ‘protected’ under Article 1A of the Rehabilitation of Offenders (Exceptions) Order 1979.<sup>19</sup> The Department of Justice stated that new rules to remove the restriction of the terms of the filtering scheme to a single conviction would be applied to AccessNI checks from 16 March 2020 and would “*ensure the continued protection of vulnerable groups without disproportionately penalising individuals*”.<sup>20</sup> The requirement whereby AccessNI could not filter any convictions that might be otherwise eligible for filtering except for the fact that an applicant had more than one conviction was also subsequently removed from Section 113A of the Police Act 1997.<sup>21</sup>

Meanwhile clause 29 of the Justice Bill amends paragraph 6 of Schedule 8A to the Police Act 1997 to extend the conditions under which an automatic review of a certificate by the Independent Reviewer of criminal record information would take

<sup>17</sup> House of Commons Library, [The retention and disclosure of criminal records](#) (February 2021), page 18

<sup>18</sup> *R (on the application of P, G and W) (Respondents) v Secretary of State for the Home Department and another (Appellants)* [2019] UKSC 3, paragraph 64

<sup>19</sup> See [Rehabilitation of Offenders \(Exceptions\) \(Amendment\) Order \(Northern Ireland\) 2019](#)

<sup>20</sup> Department of Justice, [Justice Minister announces changes to the AccessNI filtering scheme](#) (March 2020)

<sup>21</sup> Section 113A of the Police Act 1997 was subsequently amended by [The Police Act 1997 \(Criminal Record Certificates: Relevant Matters\) \(Amendment\) Order \(Northern Ireland\) 2021](#). Orders for England and Wales following the Supreme Court judgment can be found in: Police Act 1997 (Criminal Record Certificates: Relevant Matters) (Amendment) (England and Wales) Order 2020 and Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020

place through two new sub-paragraphs.<sup>22</sup> The effect of new sub-paragraph (1A) is that a referral of a proposed certificate to the Independent Reviewer would be required where it contains details of any spent conviction which occurred at a time when the person was under the age of 18, and no details of any conviction (whether spent or not) or other disposal occurring at a time when the person was aged 18 or over. New sub-paragraph (1B) provides that a referral of a proposed certificate to the Independent Reviewer would be required where the certificate contains details of any other disposal which occurred at the time when the person was under the age of 18 only. This new sub-paragraph does not contain the over 18 exception which appears in (1A).

Standard and Enhanced AccessNI certificates will always include:

- All convictions, cautions, informed warnings and diversionary youth conferences for specified offences; and
- All convictions that resulted in a custodial sentence (including suspended sentences).<sup>23</sup>

Other records will be included depending on when the conviction or caution was received:

- Any adult (over 18) conviction for a non-specified offence received within the last 11 years;
- Any adult (over 18) caution for a non-specified offence received within the last 6 years;
- Any youth (under 18) conviction for a non-specified offence received within the last 5 and a half years;
- Any youth (under 18) caution or diversionary youth conference for a non-specified offence received within the last two years;

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<sup>22</sup> More information contained in Northern Ireland Assembly Research and Information Service, [Justice Bill Paper](#) (September 2024)

<sup>23</sup> NI Direct, [AccessNI Criminal Record Checks](#)

- Any adult (over 18) informed warning for a non-specified offence within the last year; and
- Any youth (under 18) informed warning for a non-specified offence within the last year.<sup>24</sup>

However, youth (under 18) cautions, informed warnings, diversionary youth conferences or spent convictions for specified and non-specified offences will be referred by AccessNI for scrutiny by the Independent Reviewer who can remove these before disclosure.<sup>25</sup> In addition, any individual can also appeal to the Independent Reviewer to review any spent convictions or other disposals included in a Standard or Enhanced certificate issued by AccessNI.<sup>26</sup>

## 1.6 Approach in Other Jurisdictions

### 1.6.1 Scotland

In Scotland, the disclosure scheme has been amended twice in recent years by Remedial Orders.<sup>27</sup> The Disclosure (Scotland) Act 2020 also amended the law in relation to the disclosure of offending behaviour as part of a package of reforms contained within the Management of Offenders (Scotland) Act 2019 and the Age of Criminal Responsibility (Scotland) Act 2019. List A offences contained in Schedule 1 of the Disclosure (Scotland) Act 2020 includes the most serious offences, such as

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<sup>24</sup> Ibid

<sup>25</sup> Department of Justice, [Independent Reviewer of Criminal Record Information Annual Report 2023-2024](#) (June 2024). Also note that the Independent Reviewer is under a statutory duty under section 5(5) and 6(7) of Schedule 8A of the Police Act 1997 not to remove any details of spent convictions or other disposals unless satisfied that the removal of those details would not undermine the safeguarding or protection of children and vulnerable adults or pose a risk of harm to the public.

<sup>26</sup> Section 4(1) of Schedule 8A of Part V of the Police Act 1997

<sup>27</sup> [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial \(No. 2\) Order 2015](#) introduced lists of convictions for offences that would be disclosed in higher level disclosures once spent. [The Police Act 1997 and the Protection of Vulnerable Groups \(Scotland\) Act 2007 Remedial Order 2018](#) made further amendments.

serious violence, sexual offending and terrorist offences.<sup>28</sup> List B in Schedule 2 includes offences that are less serious than List A offences but are offences which still warrant disclosure even when spent, for example, theft and fraud. The Disclosure (Scotland) Act 2020 also provides for Disclosure Scotland to assess in each case whether information about spent childhood convictions and children's hearing outcomes (under 18) ought to be disclosed.<sup>29</sup>

The Act also contained a new process where individuals may apply for information appearing on a Level 2 (equivalent to standard) disclosure to be reviewed in certain circumstances. Individuals convicted of a List A offence can apply to Disclosure Scotland to have a spent conviction filtered if it is at least 11 years since the date of conviction. List B offences can be filtered after 11 years if an individual was convicted as an adult and 5.5 years for under 18s. It is possible to apply to Disclosure Scotland to have a spent conviction for a List B offence reviewed if it is less than 11 years since the conviction date.<sup>30</sup> A Protecting Vulnerable Groups (PVG) scheme also operates in Scotland for regulated roles.<sup>31</sup>

### 1.6.2 England and Wales

In England and Wales, Standard or Enhanced Disclosure and Barring Service (DBS) certificates will include details of convictions and cautions (excluding youth cautions, reprimands and warnings) recorded on the Police National Computer. There is provision for a certain convictions and cautions to be filtered: adult caution for a non-specified offence after 6 years, adult conviction for a non-specified offence after 11 years and under 18 conviction for a non-specified offences after 5.5 years.<sup>32</sup>

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<sup>28</sup> [The Disclosure \(Scotland\) Act 2020 \(List A and B Offences\) Amendment Regulations 2025](#) amended the offence lists that will be used from 01 April 2025

<sup>29</sup> Disclosure Scotland, [Disclosure Act Update](#) (March 2025)

<sup>30</sup> Disclosure Scotland, [Review applications: Guidance on how to apply for a review of disclosure information](#) (March 2025)

<sup>31</sup> Disclosure Scotland, [PVG Scheme: Regulated Roles Guidance](#) (April 2025)

<sup>32</sup> Disclosure and Barring Service, [DBS filtering guide](#) (October 2023)

However, a specified offence on the list of specified offences agreed by Parliament will always be disclosed on a Standard or Enhanced DBS certificate, regardless of how long ago it was given. This includes where a specified offence receives a caution (but not youth cautions, reprimands or warnings).<sup>33</sup> A publicly available list of ‘offences that will never be filtered’ has been published by the Home Office and DBS. This includes a range of offences which are serious, relate to sexual or violent offending or are relevant in the context of safeguarding.<sup>34</sup>

## 2 List of Specified Offences

### 2.1 Public Consultation

In July 2023, the Department of Justice issued a 12 week consultation on proposals from a review of the list of specified offences contained in Section 113A(6D) of the Police Act 1997.<sup>35</sup> The list comprises serious and violent offences, including sexual crimes and matters relevant to safeguarding or child protection. As highlighted above, offences on this list cannot be filtered and will remain on Standard and Enhanced AccessNI certificates, subject to any decisions taken by the Independent Reviewer. AccessNI has also published a list of specified offences which will never be filtered which contains more detail than the lists and descriptions of offences currently contained in Section 113A(6D).<sup>36</sup>

The consultation received 13 responses. The Department’s consultation paper highlighted that Section 113A(6D) of the Police Act 1997 is “*difficult to navigate and not user friendly*”, particularly given that a number of sub-sections link to other legislative instruments and associated schedules. This can result in uncertainty over what offences are included in the list, often when new and relevant offences are enacted, leading to confusion around what offences cannot be filtered from Standard

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<sup>33</sup> Ibid

<sup>34</sup> Disclosure and Barring Service, [List of offences that will never be filtered from a DBS certificate](#) (November 2018)

<sup>35</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023)

<sup>36</sup> AccessNI, [List of Specified Offences which will never be filtered from Standard or Enhanced Criminal Record Certificates](#) (November 2023)

and Enhanced AccessNI certificates.<sup>37</sup> It also causes operational difficulties for AccessNI in administering this aspect of the Filtering Scheme.

10 respondents were in favour of the Department's plans to amend the name of the List of Specified Offences to the List of Non-Filterable Offences. The rationale behind this appears to have been that it would reduce the potential for confusion given that the term specified offences is already used in other legislative instruments.<sup>38</sup> The amendment under clause 29A does not reference 'non-filterable offences' so it may be worth clarifying whether the name change will only be applied to the list publicly available online and when this will take effect.

## 2.2 Proposals under Clause 29A

The public consultation included proposals covering the definition of "relevant matter" in Section 113A(6)(a)(i) and (iv) and (c). This suggests removing the references to (6D) and changing these to instead mean the list of non-filterable offences as maintained by the Department. The Department noted that Section 113A(6D) "*does not provide sufficient clarity for a reasonable member of the public to determine whether an offence would be disclosed on an AccessNI certificate*".<sup>39</sup> All respondents agreed with the Department's proposals on this for simplifying the way in which the list is managed and maintained.<sup>40</sup>

Clause 29A(2) substitutes subsection (6) which removes two of the references to subsection (6D) and replaces this with Schedule 8ZA which contains the offences currently listed in section (6D) in a more detailed format by listing offences individually using name/section of legislation. Reference in Section 113A(6)(a)(iv) to a "current conviction of any offence, except an offence within subsection (6D), stated

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<sup>37</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023), page 8

<sup>38</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences: Consultation Summary Report](#) (December 2023), page 5

<sup>39</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023), page 10

<sup>40</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences: Consultation Summary Report](#) (December 2023), page 6

by a court to be aggravated under section 15 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021” does not feature in the definition of “relevant matter” in the substituted subsection (6). Schedule 8ZA now lists an offence under Section 1 of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021.<sup>41</sup>

Clause 29A(4) also further clarifies the definition of “relevant matter” within subsection (6E) in respect of sentences of imprisonment, sentences of service detention and custodial orders. This highlights at 29A(4)(b) that “sentence of imprisonment” has the meaning given by Article 6 of the Rehabilitation of Offenders (Northern Ireland) Order 1978. Disposals that result in a period of detention, including those that are suspended, are therefore excluded from the filtering scheme. Further detail is also added to the legislation around the meaning of custodial order.<sup>42</sup>

Respondents to the 2023 consultation exercise were also asked whether the meaning of “listed offence” in Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (NI) 1979 should be streamlined. The Department noted that complications currently arise as the same legislative provisions in s113A(6D) of the Police Act 1997 are repeated in Article 1A(4) of the Rehabilitation of Offenders (Exceptions) Order (NI) 1979, requiring amendments to be accurately reflected in both statutory instruments to be legally binding from an AccessNI disclosure and filtering perspective.<sup>43</sup> All respondents agreed with this suggestion.<sup>44</sup> The Justice Bill substitutes the existing definition of a “listed offence” in the 1979 Order for an offence falling within Schedule 8ZA to the Police Act 1997.<sup>45</sup>

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<sup>41</sup> Justice Bill, [Clause 29A](#)

<sup>42</sup> Ibid

<sup>43</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023), page 8

<sup>44</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences: Consultation Summary Report](#) (December 2023), page 7

<sup>45</sup> Justice Bill, [Clause 29A](#)



## 2.3 Non-Filterable List Committee

Clause 29A(5) provides the Department with the power to amend by order Schedule 8ZA to “(a) add or remove an offence or a description of an offence; (b) vary an entry relating to an offence or a description of an offence”. This would be subject to the negative resolution procedure before the Assembly. This also requires the Department to consult with the Department of Health, PSNI and the Independent Reviewer when amending the List of Non-Filterable Offences.

Respondents to the 2023 consultation were asked whether they agreed that a new non-filterable list committee should be established comprising “the Independent Reviewer of Criminal Record Certificates along with representatives from Child Protection Unit (Department of Health), Protective Disclosure Unit (PSNI) and AccessNI”. It was suggested that any new Committee would meet two times a year (or more regularly if considered necessary) to consider and recommend any adjustments to the list. Furthermore, any recommendations would also be submitted to the Justice Minister for approval and shared with the Justice Committee for feedback.<sup>46</sup> All respondents to the consultation agreed with this proposal. Comments indicated that this would help to ensure that any new offences are added to the list in a timely fashion and that it is kept consistently under review. All respondents also agreed with the proposed membership of the Committee.<sup>47</sup>

## 2.4 Schedule 8ZA

The 2023 consultation document contained a proposal to add 13 new offences to the list of non-filterable offences. These were described as new offences, or commenced offences, enacted since the list was first created in 2014 which Departments specifically highlighted for inclusion in the interests of safeguarding.<sup>48</sup> For example, these cover offences under the Mental Capacity Act (Northern Ireland) 2016 and Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act

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<sup>46</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023), page 10

<sup>47</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences: Consultation Summary Report](#) (December 2023), page 8 and 9

<sup>48</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023), page 11



(Northern Ireland) 2015. All respondents agreed with that these offences should be added. As previously highlighted, Schedule 8ZA can also be amended by way of an Order subject to the negative resolution procedure before the Assembly.

In addition, the consultation explored the potential to amalgamate multiple lines of entry on the list relating to the same Article/Section of legislation into a single entry with the use of generic offence descriptors. For example, this would amalgamate multiple entries relating to Section 4(3) Misuse of Drugs Act 1971 into a single line incorporating a generic descriptor relating to the production and supply of controlled drugs.<sup>49</sup> Another example is Section 20 of the Children and Young Persons Act (Northern Ireland) 1968 which has 26 entries on the existing list which would be amalgamated into one generic descriptor relating to cruelty to persons under 16. 12 respondents were in favour of this, recognising that this would make it more user-friendly and easier to interpret.<sup>50</sup> Schedule 8ZA inserted by Schedule 5 of the Justice Bill aims to implement this through amalgamating into a single line the existing entries that relate to the same Article/Section of an Act or Order across a range of serious offences.

Furthermore, the 2023 consultation highlighted that the lists used by the DBS and Disclosure Scotland incorporate statements reflecting the provisions contained within Section 113A(6D)(III) and (mmm) of the Police Act 1997. The DBS list contains a statement that “Any offence of attempting or conspiring to commit any offence [included on the list]; Any offence of inciting, or aiding, abetting, counselling or procuring the commission of any offence [included on the list]; and any offence under the law of Scotland or Northern Ireland or any territory outside the United Kingdom which corresponds to an offence under the law of England and Wales [included on the list]”.<sup>51</sup>

Therefore the Department proposed to include a similar statement in a new list of non-filterable offences for Northern Ireland. This was supported by all respondents to

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<sup>49</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences](#) (July 2023), page 9

<sup>50</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences: Consultation Summary Report](#) (December 2023), page 12

<sup>51</sup> Disclosure and Barring Service, [List of offences that will never be filtered from a DBS certificate](#) (November 2018)

the consultation.<sup>52</sup> Part 3 of Schedule 8ZA to the Justice Bill includes at paragraph 150 “(1) An offence of attempting or conspiring to commit an offence listed in the preceding paragraphs of this Schedule; (2) An offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting) in relation to an offence listed in the preceding paragraphs of this Schedule; (3) An offence of aiding, abetting, counselling or procuring the commission of an offence listed in the preceding paragraphs of this Schedule”. Paragraph 151 states that “An offence under the law of England and Wales, or Scotland, or any country or territory outside the United Kingdom, which corresponds to any offence listed in the preceding paragraphs of this Schedule”.<sup>53</sup> This should reduce the frequency of the same offence in Northern Ireland and England & Wales/ Scotland being repeated on the list.

It is worth noting that the Department’s background information on the AccessNI filtering amendments provided to the Justice Committee noted a “*single inconsistency*” to Schedule 8ZA.<sup>54</sup> This highlights that “any offence involving injury or threat of injury to another person” under Paragraph (2) of the Schedule to the Disqualification of Caring for Children Regulations (Northern Ireland) 1996 is included on the existing list. However, this is described as a “*wide-ranging entry and is inconsistent with how other offences are required to be treated on the list*”. Following legal advice, the Department has proposed the omission of this entry from the list in order to reflect operational practice and it does not feature in Schedule 8ZA. More broadly, Police have the statutory ability to disclose information that they reasonably believe to be relevant and ought to be disclosed, even where this is filtered, or the Independent Reviewer requires it to be removed from an Enhanced Certificate.<sup>55</sup>

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<sup>52</sup> Department of Justice, [A consultation on proposals to update and reform the AccessNI List of Specified Offences: Consultation Summary Report](#) (December 2023), page 14

<sup>53</sup> [Schedule 8ZA](#), inserted by Schedule 5 of the Justice Bill

<sup>54</sup> Department of Justice, [Appendix D: AccessNI Filtering Amendments](#) (December 2024)

<sup>55</sup> Section 113B(4) of the Police Act 1997

## 2.5 Stakeholder Reaction

The Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) welcomed the proposed amendments to AccessNI filtering as they “*aim to streamline the disclosure process and provide greater clarity on non-filterable offences*”. NIACRO commended the amendment’s focus across three areas:

- Simplifying the list of non-filterable offences by making it more accessible and easier to navigate;
- Clarifying the definition of ‘Relevant Matter’, ensuring consistency in how custodial sentences and detention periods impact disclosure; and
- Introducing a structured consultation process, requiring engagement with key stakeholders before modifying the list of non-filterable offences.<sup>56</sup>

NIACRO requested further consideration be given to expanding filtering eligibility to ensure that “*outdated convictions do not disproportionately impact individuals who have demonstrated rehabilitation*”.<sup>57</sup> NIACRO noted the need for enhancing public awareness on this issue and strengthening appeal mechanisms so that individuals can challenge disclosure decisions where appropriate. NIACRO also called for the rehabilitation periods in the Rehabilitation of Offenders (Northern Ireland) Order 1978 to be aligned with England and Wales.<sup>58</sup>

The Commissioner Designate for Victims of Crime welcomed the amendment to the Justice Bill on AccessNI filtering, stating that this would “*make it easier for victims of crime to understand our criminal justice system and the impact on people convicted of crimes*”.<sup>59</sup> Victim Support Northern Ireland stated its broad agreement with the amendment but noted that it is “*crucial for victims to be fully aware of how this system works and the potential risks involved in the filtering process*”.<sup>60</sup>

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<sup>56</sup> NIACRO, [Written Submission to the Justice Committee on the Justice Bill](#) (May 2025), paragraph 5.2

<sup>57</sup> Ibid

<sup>58</sup> Ibid, paragraph 4.1

<sup>59</sup> Commissioner Designate for Victims of Crime, [Justice Bill](#) (April 2025)

<sup>60</sup> Victim Support Northern Ireland, [Response to Justice Bill Call for Views](#) (March 2025), page 10

Children in Northern Ireland (CiNI) expressed concern that “*while these reforms aim to simplify filtering of criminal records, the removal of certain protections may disproportionately affect children*”. CiNI noted the Disqualification of Caring for Children Regulations (Northern Ireland) 1996 which requires that “any offence involving injury or threat of injury to another person” is included on the existing list. The Department now plans to remove this from the list to reflect operational practice as the reference is “*unclear and does not accord with the policy in the area (filtering non-serious offences) or the accompanying caselaw*”.<sup>61</sup> CiNI stated that the Department has not provided any assessment of the potential impacts of this change and called for this to be undertaken to ascertain whether it poses any significant risk to the welfare of children given the role that AccessNI checks play in safeguarding and vetting potential staff working directly with young people.<sup>62</sup>

Department officials attending the Justice Committee in January 2025 discussed the removal of this noting that “*our preference is that the list actually includes the offences, not just some vague description... We argue that, if offences result in injury to another person, they must be on the list... Going forward, the statement is not required on the list, because the offence will be on the list*”.<sup>63</sup>

### 3 Scrutiny Points

- When would the Department change the name of the List of Specified Offences to the List of Non-Filterable Offences as outlined in the 2023 consultation? How would the Department communicate this change to the wider public? Would this just apply to the list maintained on the public website by AccessNI? Would there be literature providing further clarity on the filtering scheme, including the manner in which non-filterable offences are treated?
- Would the Department promote greater awareness of the role of the Independent Reviewer? And that offences on the list can be removed from Standard or

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<sup>61</sup> Department of Justice, [Appendix D: AccessNI Filtering Amendments](#) (December 2024)

<sup>62</sup> Children in Northern Ireland, [Evidence submitted to the Committee for Justice on the Justice Bill](#) (April 2025), page 5

<sup>63</sup> Northern Ireland Assembly Official Report, [Justice Bill - Department of Justice Amendments Part 1: Biometrics, Restorative Justice, AccessNI Filtering and Serious Organised Crime](#) (16 January 2025)

Enhanced checks, subject to consideration on appeal to the Independent Reviewer?

- How does AccessNI currently identify offences that cannot be filtered from a certificate? And is the existing manual system using the Police National Computer operating in accordance with Section 113A(6D)? Is there a potential risk of inadequate or inappropriate disclosures being made? Would AccessNI produce a single, clear publicly available list online of offences that can never be filtered and would this be consistent with Schedule 8ZA?
- What practical difference would listing offences individually by name/section in Schedule 8ZA make for users, for example job applicants and prospective employers? Would these changes help to balance the right of an offender to rehabilitation with the need to ensure that information relevant to an assessment of an individual's suitability to hold a particular employment or role?
- How often is it anticipated that new offences be added to Schedule 8ZA? Would the terms of reference establishing the non-filterable list committee be shared with the Justice Committee? Should consideration be given to wider representation on the non-filterable list committee?
- Should there be a wider review of the system of disclosure of criminal records given the complex legal framework in this area? And consideration be given to expanding eligibility for more offences to be filtered?